

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 27 MAY 2020



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 27 May 2020

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 13 MAY 2020

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 13 May 2020 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1

**REV2020/0012 - 5 BIRDWOOD AVENUE, COLLAROY - REVIEW
OF DETERMINATION TO DA2019/0616 PROPOSED TO
REGULARISE THE USE OF A BUILDING AS A SECONDARY
DWELLING, WITH CAR PARKING AND FRONT FENCE**

EXTERNAL CONSULTANT Sarah McNeilly

TRIM FILE REF **2020/285751**

ATTACHMENTS

1 Assessment Report

2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuse** Development Consent to REV2020/0012 for Review of determination to DA2019/0616 proposed to regularise the use of a building as a Secondary dwelling, with car parking and front fence on land at Lot 3 DP 9667, 5 Birdwood Avenue, Collaroy, subject to the conditions outlined in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2020/0012
Responsible Officer	Sarah McNeilly (Consultant Planner)
Land to be developed (address)	Lot 3 DP 9667, No. 5 Birdwood Avenue, Collaroy
Proposed Development	Review of Determination of Application DA2019/0616 for Regularisation of the use of an existing building as a secondary dwelling, carparking and front fence
Zoning:	R2 Low Density Residential (WLEP2011)
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council - DDP
Land and Environment Court Action:	No
Owner:	Christopher Douglas Hunt Kristine Mary Hunt
Applicant:	Christopher Douglas Hunt Kristine Mary Hunt
Application lodged:	12 March 2020
Application Type:	Local
State Reporting category:	Residential – Alterations and Additions
Notified:	02/04/4040 to 16/04/2020
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	Six (6)
Recommendation:	Refusal
Estimated Cost of Works:	\$5,000

EXECUTIVE SUMMARY

The application seeks a review of the determination of DA2019/0616, for the regularisation of the use of an existing building as a secondary dwelling, parking and front fence, which was refused by Northern Beaches Council on 11 December 2019.

The Development Application was refused due to non-compliances with the *Warringah Development Control Plan 2011*. The non-compliance of the Front Boundary Setback and the Landscaped Open Space and Bushland Setting controls resulted in a determination that the frontage of the site was inconsistent with desired landscape streetscape setting for Birdwood Avenue.

In response to the Development Application refusal, the applicant has submitted the request for review of determination with additional information including details of enhanced on site landscaping with a vertical element, referenced in the planning submission.

Whilst the landscaping is to the benefit of the site, as was seen at a site inspection, it is not considered to satisfactorily resolve the initial reasons for refusal and accordingly, the application is referred to the Development Determination Panel with a re-affirmed recommendation for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks a review of the refusal of DA2019/0616 for the regularisation of the use of an existing building as a secondary dwelling, carparking and front fence.

The Development Application was refused for the following reasons:

- Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the development is inconsistent with the provisions of Clause D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan 2011.
- Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan 2011.

The application is accompanied by a statement addressing objectives of the relevant controls including a detailed planting schedule demonstrating the extensive planting of the site in its entirety. In particular, significant planting in front of the secondary dwelling and within the area between the principal dwelling and the street frontage is provided.

The application for review did not include plans as the plans submitted with the Development Application were relied upon.

A supplementary landscape plan was provided by the owner on 14 May 2020 detailing the removal of hardstand areas on the frontage and eastern side of the car spaces and replacement with open spaced stepping stones and strips with ground cover and mass planting.

Section 8.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) provides that the applicant may request a review of a development if substantially the same development. The development is primarily unchanged and accordingly may be considered and, as such, the application is referred to the Development Determination Panel for determination.

In summary, the proposal continues to seek:

- A change of use of the existing detached weatherboard and aluminium roof garage to permit a secondary dwelling.

The physical works related to the detached building, hardstand parking area and landscape/earthworks have been carried and will be the subject of a separate Building Information Certificate. The secondary dwelling provides for a combined kitchen, living and bedroom area with a separate bathroom with laundry facilities.

The secondary dwelling is orientated towards Birdwood Avenue, with sliding doors providing access from the internal areas to a small garden area adjacent to the front boundary. A single entry door is provided on the eastern elevation of the building.

- A small section of new fence is proposed along the western portion of the front boundary.

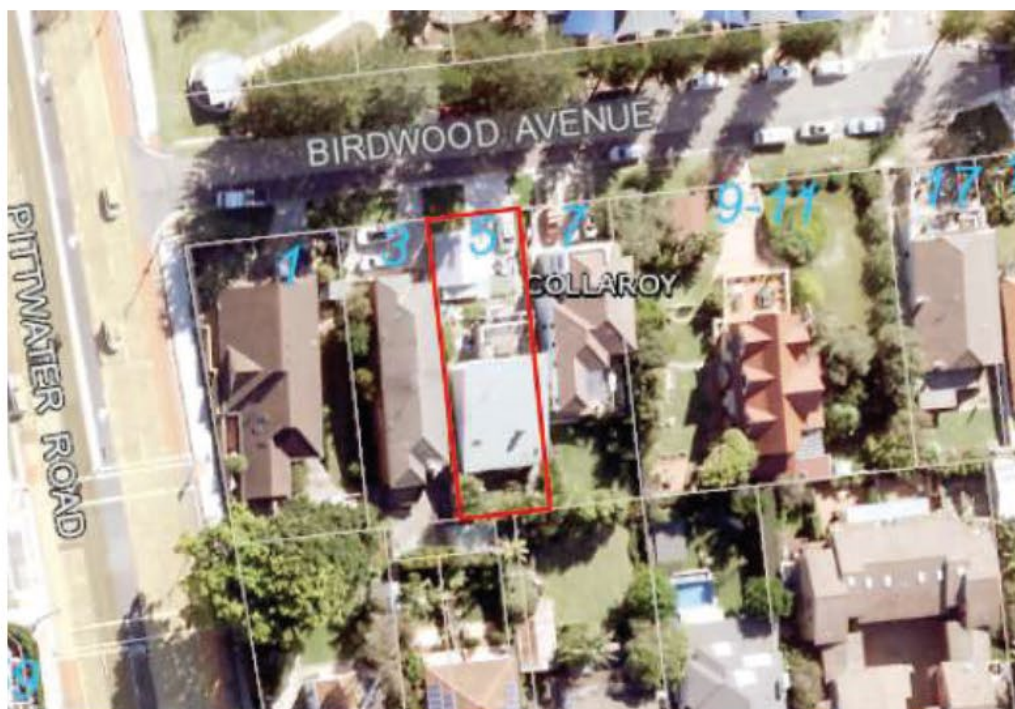
The fence is to be a maximum of 1.2m high and be constructed of timber pickets and sandstone construction.

SUMMARY OF ASSESSMENT ISSUES

The assessment issues are summarised below:

- Environmental Planning and Assessment Act 1979 - Section 8.3.
- Warringah Development Control Plan - Clause B5 Side Boundary Setback.
- Warringah Development Control Plan – Clause B7 Front Setback.
- Warringah Development Control Plan – Clause D1 Landscaped Open Space.

SITE DESCRIPTION



Property Description:	Lot 3 in DP 9667, No. 5 Birdwood Avenue. Collaroy
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Birdwood Avenue.

	<p>The site is a rectangular shaped allotment with a frontage of 12.19m to Birdwood Avenue and a depth of 40.235m. The site has a total surveyed area of 490.5m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling, detached outbuilding forward of the dwelling and adjacent hard stand parking area.</p> <p>The site enjoys views of the coastline and ocean to the north and east. The site has fall from the rear boundary towards the street.</p> <p>There is no significant vegetation on site.</p> <p>The site is currently drained to the street gutter in Birdwood Avenue.</p> <p>The character of the immediate locality is predominately residential in nature and consists of two to three storey detached dwelling houses and three storey apartment buildings/attached dwellings. A number of these properties have minimal landscaping. The northern side of Birdwood Avenue is public open space and provides access to Collaroy Beach.</p> <p>The property to the west (3 Birdwood Avenue) is a three storey red brick residential flat building comprising five (5) units with garaging occupying the lower level facing the street and two (2) levels of apartments above. The front setback area comprises hard paving.</p> <p>The property to the east (1 & 2/7 Birdwood Avenue) is a part two (2) and part three (3) storey residential building comprising two attached dwellings. Parking is located at the lower level facing the street with the front setback area comprising hard paving.</p>
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SITE HISTORY

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

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

- Secondary Dwelling.
- Streetscape/Landscape Open Space.

- Front Building Setback.
- Building Certificate for unauthorized works.

On 17 June 2019, the subject development application was lodged with Council and was subsequently refused on 11 December 2019. This application is the subject of this Review of Determination.

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

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	Not Applicable
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent should this application be approved.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent should this application be approved.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent should this application be approved.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent should this application be approved.</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>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>In particular, the proposed development is not considered to provide a positive contribution to the built environment.</p> <p>The proposed development will not have a detrimental social impact on the locality.</p> <p>The proposed development will not have a detrimental economic impact on the locality.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development, with the result being overdevelopment of the street frontage/ setback area of the site.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	The application was notified for a period of 14 days from 02/04/2020 to 16/04/2020. The public exhibition resulted in 5 submissions (1 objection/ 4 in support).
Section 4.15 (1) (e) – the public interest	The proposal presents a design which poorly addresses the public street and neighbouring properties. The application is to the detriment of Birdwood Avenue and the development is at odds with the public interest.

Section 8.3 – Application for and conduct of review

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 and 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 11 December 2019. The review was lodged on 12 March 2020, and must be determined by 11 June 2020 to be within 6 months of the determination date.

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 application described in the original development application, the consent authority is satisfied that the development, as amended, is substantially the same development as described in the original application, Additional supporting information has been provided but no changes to plans as detailed earlier in this report.

A review of the original plans and additional supporting detail has found that the development remains the same. Accordingly, it is concluded that the development satisfies the requirements of Section 8.3 (3) of the Act.

EXITISING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the initial public exhibition process Council is in receipt of six (6) submissions from:

Name	Address
John and Janette Tuinman	1 Birdwood Avenue, Collaroy
Neville Stanford	1/3 Birdwood Avenue, Collaroy
Craig Busch	15 Birdwood Avenue, Collaroy
Peter Dawson	1/7 Birdwood Avenue, Collaroy
Alfred Aspinall	19 Birdwood Avenue, Collaroy
Confidential	Confidential

There were four (4) submissions in support of the proposal with two (2) submissions in objection, raising the following issues.

- ***Unsatisfactory impact on the predominant streetscape due to hardstand area and setback non-compliance/ front setback***

Comment

The impacts on Birdwood Avenue are agreed to be undesirable with excess hard surface and the minimal landscaped area. Location of the secondary dwelling within the front setback is not in line with the Warringah Development Control Plan requirements for front setbacks, parking or landscaped area. The landscaping and planting within this space has been significantly improved since the original application was made, however, the existence of the additional two car spaces results in the frontage being dominated by hard surface.

This issue forms a reason for the refusal of the application.

- ***Installation of plants during water restrictions***

Comment

This is not relevant to the planning assessment.

This issue does not warrant the refusal of the application.

- ***Increased parking issues with increased density***

Comment

A secondary dwelling is a permissible use, without the requirement for additional parking to be provided on the lot. However, the location of the secondary is to the detriment of existing parking and landscaped area.

This issue forms a reason for the refusal of the application.

- ***Planting aggravates stormwater issues***

Comment

This is not relevant to the planning assessment.

This issue does not warrant the refusal of the application.

- ***Cost of works incorrect***

Comment

As the works is for a change of use, and not building works, this cost of works is considered reasonable. The works which have been done would be the subject of the Building Information Certificate Application and the complete cost of works would be considered in this stage, should the change of use be successful.

This issue does not warrant the refusal of the application.

- ***Proximity of eaves to side setback non-compliant***

Comment

It is agreed that the siting of the secondary dwelling is non-compliant with the side setback controls. Variation for an historic garage in this location is reasonable, however, further intensification of the use, though the additional works is not supported.

This issue does not warrant the refusal of the application

- ***Additional waste bins***

Comment

It is agreed that should the application be approved appropriate location for storage of waste bins is a matter to be considered in the assessment. In this case the recommendation remains for refusal.

This issue does not warrant the refusal of the application

- **Noise implications due to proximity to neighbouring units at no.3 Birdwood Avenue**

Comment

Secondary dwellings are permissible in the R2 Low density zone and the use is not considered unreasonable on the basis of acoustic privacy impacts.

This issue does not warrant the refusal of the application

- **Historic secondary dwelling**

Comment

It is agreed that the original use of the building appears to have been a garage with no consent previously provided for a change of use. Accordingly, this application seeks for the change of use.

This issue does not warrant the refusal of the application.

- **Parking Bay location does not comply with Council standards and crossover has been approved by Council even though not complying with standards, which in turn takes away from street parking.**

Comment

The location of the two parking spaces at the front of the site are not supported. It is agreed that the existing crossover does not comply with current Council requirements. Should the development be approved, it would be appropriate to ensure a compliant crossover to maximise on street parking.

This issue forms a reason for the refusal of the application.

- **Inadequate landscaped Area**

Comment

It is agreed that the area of landscaping on the site has been reduced to an unsatisfactory level, which is particularly to the detriment of the streetscape. While this has been minimised with plantings, it is still at a percentage which can not be supported.

This issue forms a reason for the refusal of the application.

- **Reliance on unauthorised works**

Comment

Should the change of use be successful, the applicant would be required to obtain a Building Information Certificate to regularise all unauthorised works on the site. These works would be considered under these provisions.

This issue does not warrant the refusal of the application.

- ***Insufficient private open space***

Comment

Private open space on the site is limited but appropriate for the secondary dwelling. This is not considered to be a reason for refusal as the site benefits from immediate access to public open space.

This issue does not warrant the refusal of the application.

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

Comment

This is a matter for the compliance section at Council and is not relevant to the current application.

This issue does not warrant the refusal of the application.

- ***Inconsistency in documentation***

Comment

Minor inconsistencies are apparent with new landscape works. The application is recommended for refusal. However, were it to be approved, these irregularities could be resolved through a condition of consent providing a proposed alternate location for bin storage.

This issue does not warrant the refusal of the application.

- ***Inadequate stormwater management details***

Comment

Council's engineers are supportive of the proposal, subject to conditions of consent. This issue does not warrant the refusal of the application.

The submissions in support of the proposal gave the following reasons:

- ***The majority of residential properties in Birdwood Avenue contain secondary buildings that do not comply with councils front setback provisions***

Comment

The site is located within an R2 Low Density Residential zone where the desired character is for open landscaped frontages.

Birdwood Avenue is not a typical R2 street with a mix of existing uses including residential flat buildings and development approved prior to the current planning controls. There are varied setbacks provided along the length of the street with some very generous and others lesser than desirable or with garages in the frontage. The development that is located within the street frontage is primarily for parking structures and no precedent is apparent for a secondary dwelling and two (2) spaces as is proposed in this instance.

- ***The secondary building at 5 Birdwood is of a very similar size and shape to all other secondary buildings in Birdwood that do not comply with front setback provisions***

Comment

The existing structure would be appropriate if it were to be retained as a garage. No issue is seen with the location and size in this instance. The problem results through the removal of landscaped area to create an alternate parking area.

- ***The secondary building at 5 Birdwood has the largest front setback of any of the secondary buildings in Birdwood that do not comply with front setback provisions;***

Comment

The existing structure would be appropriate if it were to be retained as a garage. No issue is seen with the location and size in this instance. The problem results through the removal of landscaped area to create an alternate parking area.

- ***The landscaping associated with the secondary building at 5 Birdwood is more extensive and in my view clearly superior to the landscaping associated with any of the secondary buildings in Birdwood that do not comply with front setback provisions;***

Comment

The landscaping which has been installed is extensive and of high quality. However, it is lacking within the street frontage and for the site area in its entirety.

- ***The appearance of the secondary building at 5 Birdwood is very much in character with the residential buildings and the secondary buildings in the street and goes to support and positively enhance that character.***

Comment

It is agreed that the structure is complementary. However, the issue is the cumulative impact of adding two (2) parking spaces within the street frontage in association with the change of use of a garage.

MEDIATION

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

REFERRALS

Internal Referrals

Referral Body Internal	Comments	Consent Recommended
Landscaping	<p>The application was referred to Council's landscape officer.</p> <p><u>Officer Comment</u></p> <p><i>"The review application REV2020/0007 seeks approval for the formalisation of pre-existing secondary dwelling use of existing front building and associated rear addition, construction of a proposed 1.2m high front fence around outer perimeter of existing open space at the front of the existing front building plus associated front landscaping, and formalisation of use of existing hardstand area incorporating double car stand with overlapping side paths."</i></p>	Yes

Referral Body Internal	Comments	Consent Recommended
	<p><i>The landscape comments for DA2019/0616 provided for conditions of consent including general vegetation protection, certification for completed landscaped works and ongoing conditions for landscape works.</i></p> <p><i>No additional information is provided with application REV2020/0007.</i></p> <p><i>On review of the existing built elements presented by DA2019/0616 that includes an existing built structure and hardstand within the front setback, the proposed landscape components of front fencing and planting, including two small trees and shrubs, soften the built form, albeit that the numerical compliance with Warringah DCP Clause B7 Front Boundary Setback is not possible due to the existence of the existing built structure and hardstand.</i></p> <p><i>It is considered that a condition of consent on the height of the trees is imposed to reduce any view impact to the adjoining property at No. 3 Birdwood Avenue. Likewise a condition of consent shall be imposed to ensure shrub hedge planting achieves at least a 1.5m height to soften the frontage in association with the proposed fencing.</i></p> <p><i>The proposal is therefore supported."</i></p> <p><u>Planner Comment:</u> The on site landscape works which have occurred since the original application are well designed and thought out to create a vertical sense to the site and soften the view of the site when viewed from Birdwood Avenue. Vegetation will eventually screen the frontage of the secondary dwelling and planting steps down the tiers of the site with additional planters and pots included.</p>	
NECC (Coastal)	<p>The application was referred to Councils coastal officer.</p> <p><u>Officer comment</u></p> <p><i>"As the proposal is not impacted by coastal processes approval of the review is supported. The proposal has been assessed to be in accordance with the matters for consideration outlined in clauses 14 and 15 of the NSW Coastal Management SEPP.</i></p> <p><i>The proposal is therefore supported."</i></p>	Yes
Building Assessment	<p>The application was referred to Council's Building Assessment officer.</p> <p><u>Officer Comment</u></p> <p><i>"The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The</i></p>	Yes

Referral Body Internal	Comments	Consent Recommended
	<i>proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage. The proposal is therefore supported."</i>	
NECC (Riparian)	<p>The application was referred to Council's Riparian Officer.</p> <p><u>Officer Comments</u></p> <p><i>"No change to original referral. The proposal is therefore supported."</i></p> <p><u>Original comments</u></p> <p><i>"The subject land has been included on 'Coastal Use Area' maps under State Environmental Planning Policy (Coastal Management) 2018. In regard to the SEPP the proposed development is unlikely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological and ecological environment. As such, it is considered that the application complies with the requirements of the SEPP."</i></p>	Yes

External Referrals

Referral Body Internal	Comments	Consent Recommended
Ausgrid	The proposal was referred to Ausgrid as part of the original application. No response was been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.	Yes

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 (number 1053989S dated 23 October 2019) was submitted with the original application and, as there has been no change to the secondary dwelling, the Certificate is relied upon in this application.

The certificate indicates compliance with the state government's requirements for sustainability.

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 as a part of the original Development Application. 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

Clause 10 is not applicable to the site.

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

- (1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment

Clause 11 is not applicable to the site.

12. Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- (b) the proposed development:
 - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
 - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and
 - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazard.

Comment

At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified.

13. Development on land within the coastal environment area

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - (b) coastal environmental values and natural coastal processes,

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

Comment

Clause 13(1) is not applicable to the site.

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

Comment

Clause 13(2) is not applicable to the site.

14. Development on land within the coastal use area

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

Comment

The proposal does not impact upon the existing and safe access to and along the foreshore.

The works do not overshadow, create wind funnelling or loss of views from public spaces to the surrounding foreshores.

The development has no impact on any heritage item or area/place.

The development as constructed and the proposed use is considered inappropriate taking into account the surrounding coastal and built environment and bulk and scale of development.

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

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

Comment

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

As such, it is considered that the application does not comply with all of the requirements of the State

Environmental Planning Policy (Coastal Management) 2018.

SEPP (Affordable Rental Housing) 2009

Secondary dwellings are permissible with the consent of Council in the R2 Low density Residential zone under the provisions of the *Warringah Local Environmental Plan 2011* (WLEP 2011) and as such does not rely upon the SEPP for permissibility.

Notwithstanding, Division 2 of the SEPP applies to secondary dwellings and the following provisions are relevant:

Clause 19 - Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument (WLEP 2011) defines secondary dwelling as follows:

“a self-contained dwelling that:

- (a) *is established in conjunction with another dwelling (the principal dwelling), and*
- (b) *is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and*
- (c) *is located within, or is attached to, or is separate from, the principal dwelling.”*

Comment

The proposed use is defined under WLEP 2011 as a secondary dwelling.

Clause 20 - Land to which this Division applies

The subject site is zoned R2 Low Density Residential and dwelling houses are permissible in the zone. Therefore, development for the purpose of a secondary dwelling is a permissible subject to this clause.

Clause 21 - Development to which this Division applies

The development involves the use of building as a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22 - Development may be carried out with Consent

Subclause (2) and (3) provides:

- (2) *A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.*
- (3) *A consent authority must not consent to development to which this Division applies unless:*
 - (a) *the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and*
 - (b) *the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.*

The development results in the principal dwelling and the secondary dwelling only on site. The secondary dwelling has an area of 39m² which complies with this clause.

Further subclause (4) provides:

- (4) *A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:*
 - (a) *site area if:*
 - (i) *the secondary dwelling is located within, or is attached to, the principal dwelling, or*
 - (ii) *the site area is at least 450 square metres,*
 - (b) *parking if no additional parking is to be provided on the site.*

The development will result in one primary dwelling and one secondary dwelling, as defined by the Standard Instrument, and therefore, this Division applies.

The total floor area of the detached secondary dwelling is 39sqm, which is compliant against the requirements of the WLEP 2011.

The site has an area of 490.5m² and the proposal does not provide any additional parking. The proposal complies with this clause.

There are no other provisions of the SEPP relevant to the proposal.

Warringah Local Environmental Plan 2011

Is the development permissible	Yes
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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	Proposed	% Variation	Complies
Height of Buildings	8.5 metres	3.7m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

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.*
- *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.*

Comment

The proposal results in the conversion of a garage to a secondary dwelling and as a result the removal of a significant landscaped area within the street frontage to allow for parking to be relocated.

The result of this is a minimal landscaped setting for the frontage of the site, which is not in harmony with the natural environment as sought by the objectives.

While the owner has done extensive landscaping to improve these impacts, the impact of the excessive hard surfaces and the street frontage is still too great.

Warringah Development Control Plan 2011

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall Height	7.2m	2.4	N/A	Yes

Built Form Control	Requirement	Proposed	% Variation	Complies
B3 Side Boundary Envelope	4m x 45°	Within envelopes	N/A	Yes
West: 0.9	0.5m (secondary dwelling)	44%	No	No
East : 0.9	5.8m (hardstand area)	N/A	Yes	Yes
	6.4m (secondary dwelling)	Yes	Yes	Yes
	0.5m (hardstand area)	NA	No	No
6.5m	2.5m (secondary dwelling)	61.5%	No	No
	0.3m (hardstand area)	95.4%	No	No
B8 Rear Setback	6.0m	N/A	N/A	N/A
D1 Landscaped Open Space and Bushland setting	40%	26%	35%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Height	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage easements	Yes	Yes
C7 Excavation and landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped open space and bushland setting	No	No
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E4 Wildlife Corridors	N/A	N/A
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

Clause B5 - Side Boundary setbacks

The secondary dwelling provides for a setback of 0.5m to the western boundary, where a setback of 0.9m is required by this clause of the DCP. This represents a variation of 44% to the requirement.

The hardstand parking provides for a setback of 0.5m to the eastern boundary, where a setback of 0.9m is required by this clause of the DCP. This represents a variation of 44% to the requirement.

It is noted that the proposal involves the regularisation of the already completed internal and rear addition to the existing outbuilding and hardstand parking spaces.

Merit consideration

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

- ***To provide opportunities for deep soil landscape areas***

Comment

The original garage is an existing structure and compliance with this setback would be unreasonable. The new hardstand area sits within the key landscaped frontage of the site. The applicant has suggested the inclusion of planters in this location which would be a positive addition, although would not provide deep soil within this zone.

The development is not consistent with this objective.

- ***To ensure that development does not become visually dominant***

Comment

The proposed change of use does not result in the construction of a new "dwelling" as this is an existing structure and accordingly the development does not result in visually dominate the site.

The development is consistent with this objective.

- ***To ensure that the scale and bulk of buildings is minimised***

Comment

The side setback non-compliance does not impact the bulk and scale of buildings as the garage structure is existing.

The development is consistent with this objective.

- ***To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained***

Comment

The proposed development does not include the construction of a new building. The location of the garage (since converted to a secondary dwelling) is unchanged and accordingly solar access is unchanged also. Similarly, use of this structure would not unreasonably impact privacy or amenity for neighbours.

The development is consistent with this objective.

- ***To provide reasonable sharing of views to and from public and private spaces***

Comment

The secondary dwelling is a single storey development with an overall height of only 3.7m and hardstand parking spaces are open. The structure does not block any views from adjoining properties. Furthermore, the proposal does not obstruct any important views or vistas from public areas.

The development is consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WLEP 2011 and WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance

Clause B7 - Front setbacks

The secondary dwelling provides for a setback of 2.5m to the Birdwood Avenue street frontage, where a setback of 6.5m is required by this clause of the DCP. This represents a variation of 61.5% to the requirement.

The hardstand parking spaces provides for a setback of 0.3m to the Birdwood Avenue street frontage, where a setback of 6.5m is required by this clause of the DCP. This represents a variation of 94.3% to the requirement.

Merit consideration

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

- ***To create a sense of openness***

Comment

The conversion of the existing garage to a secondary dwelling results in the need for the creation of alternate onsite parking, which in turn takes space which would otherwise be landscaped area.

The sense of openness in the frontage of the site is lost with hard surfaces and built structures now dominating. The amended landscape plan aids in further softening this impact with the use of varied materials including sandstone strips with ground cover. While the additional landscaping aids in softening the hard frontage, it is not considered ample to allow for the non-compliance to be justified.

The development is not consistent with this objective.

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

Comment

The loss of the landscaped space to create the double hardstand parking area is at odds with the inclusion of landscape elements within the mix of built environment.

The development is not consistent with this objective.

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

Comment

The loss of landscaped area for the hard stand parking results in a loss of the open and landscaped streetscape.

While some neighbouring structures are large and include parking within the frontage, the site is within the R2 zone and open detached dwellings are the desired character.

The development is not consistent with this objective.

- ***To achieve reasonable view sharing***

Comment

The proposed development does not impact on view sharing with the variation to the front setback control.

The development is consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 and WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance

Clause D1 - Landscaped Open Space

The subject site provides for a landscaped area of 26%, where an area of 40% is required by this clause of the DCP. This represents a variation of 35% to the requirement. The hardstand area which has been created has an area of 42.8m², which is 8.73% of the site.

Merit consideration

The change of use including the providing on a hardstand parking area results in a large variation to the landscaped area control. The owner has mass planted much of the site and also much of the hard surface area is informal sandstone paving which includes surrounding ground cover planting and this is excluded from the calculations.

While these elements add to the landscape feel and character of the site, it is not considered to be sufficient to allow for such a significant variation of the landscape control.

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

Comment

The landscaped area has been enhanced with improved planting with the assistance of landscape plan. However, the lesser space, particularly within the frontage is still to the detriment of the site and the Birdwood Avenue streetscape.

The development is not consistent with this objective.

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

Comment

The addition of indigenous planting since the original application was considered is an improvement and to the benefit of the site.

The development is consistent with this objective.

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

Comment

The loss of the frontage to allow for two parking spaces is a large loss of valuable green space for this site. While planting is provided in front of the secondary dwelling and to the rear of the secondary dwelling, this is not ample to satisfactorily address this concern.

The development is not consistent with this objective.

- ***To enhance privacy between buildings***

Comment

The non-compliance with the landscaped area does not contribute to a loss of privacy. The secondary dwelling is single storey and is located immediately adjacent to a driveway on the adjoining western property. The secondary dwelling is setback more than 6m to the eastern boundary and is located significantly lower than the habitable areas and private open space of the two (2) adjoining properties. The secondary dwelling is primarily orientated to the north and it is considered that there are no unreasonable privacy impacts.

The development is not consistent with this objective.

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

Comment

A small area (approximately 14m²) is provided forward of the secondary dwelling which is considered appropriate given the modest size of the secondary dwelling being only 39m². Furthermore, it is accepted that there is opportunity for shared private open space with an additional area (being 54m²) and access via the existing stair adjacent to the eastern boundary. The site is also well located with regard to access to public open space.

The development is consistent with this objective.

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

Comment

There is sufficient area for service functions within the open space to the rear of the secondary dwelling.

The development is consistent with this objective.

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

Comment

All collected stormwater is to be discharged to the street gutter in Birdwood Avenue. Given the slope of the site, it is not anticipated that the proposal will result in additional runoff to the adjoining properties. A condition of consent could be imposed in relation to the discharge of stormwater were the application to be approved.

The development is consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2011, Warringah Development Control Plan and the relevant codes and policies of Council. In

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

- Inconsistent with the objectives of the DCP.
- Inconsistent with the zone objectives of the LEP.
- Inconsistent with the aims of the LEP.
- Inconsistent with the of the relevant EPI's.
- Inconsistent with the objects specified in S.5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979

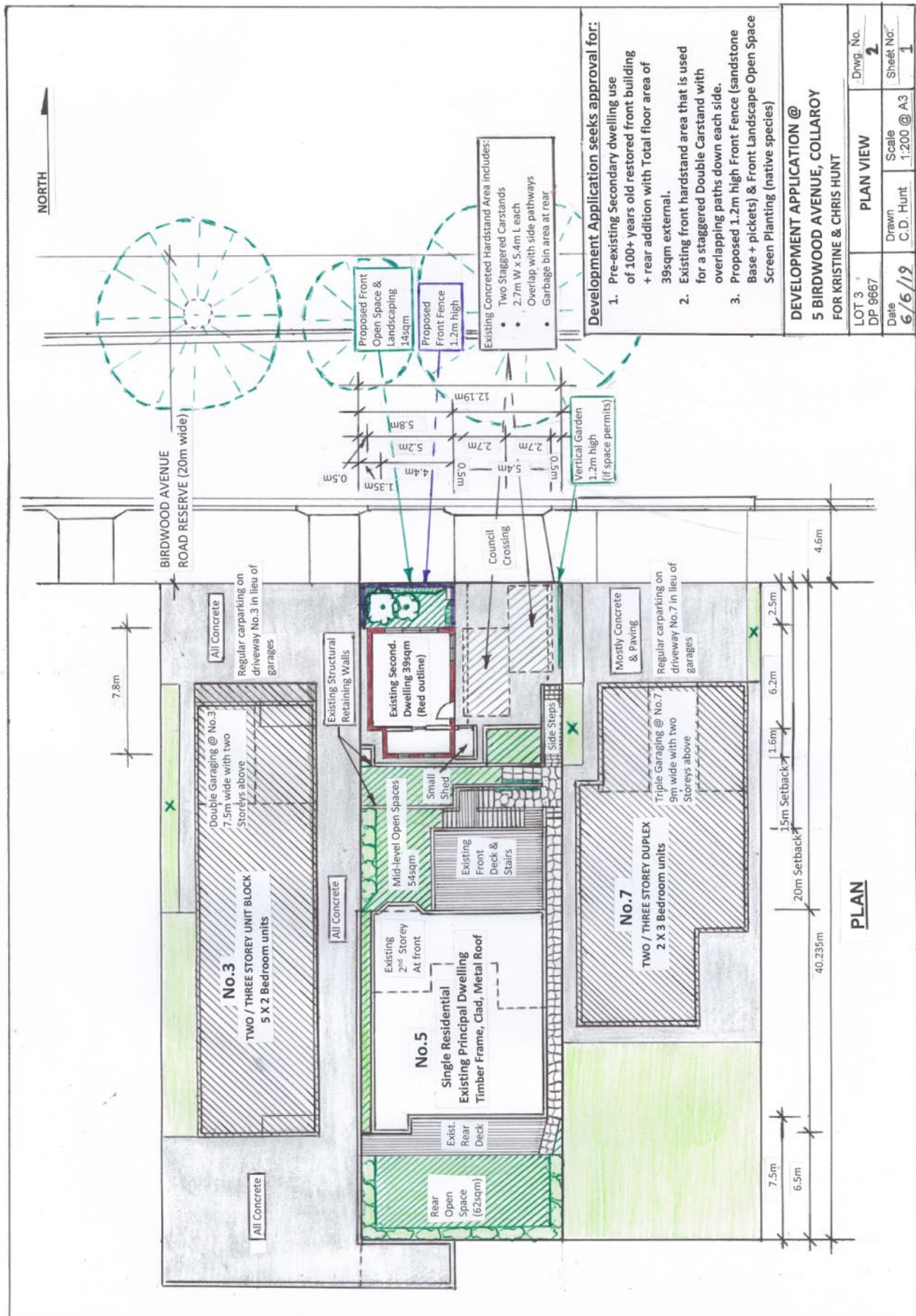
The non-compliance of the Front Boundary Setback and the Landscaped Open Space and Bushland Setting controls result in a conclusion that the frontage of the site is inconsistent with desired landscape streetscape setting for Birdwood Avenue. In particular the conversion of the landscape space on the eastern side of the frontage changes the desired open green character of the streetscape to an area dominated by hard surfaces. While the planting completed by the owner over the last few months has been to the vast gain of the site, it is considered inadequate to resolve the issue of insufficient landscape area for the site as a whole and the for the street frontage.

It is considered that the proposed development fails to satisfy all of the appropriate controls and that all processes and assessments have been satisfactorily addressed.

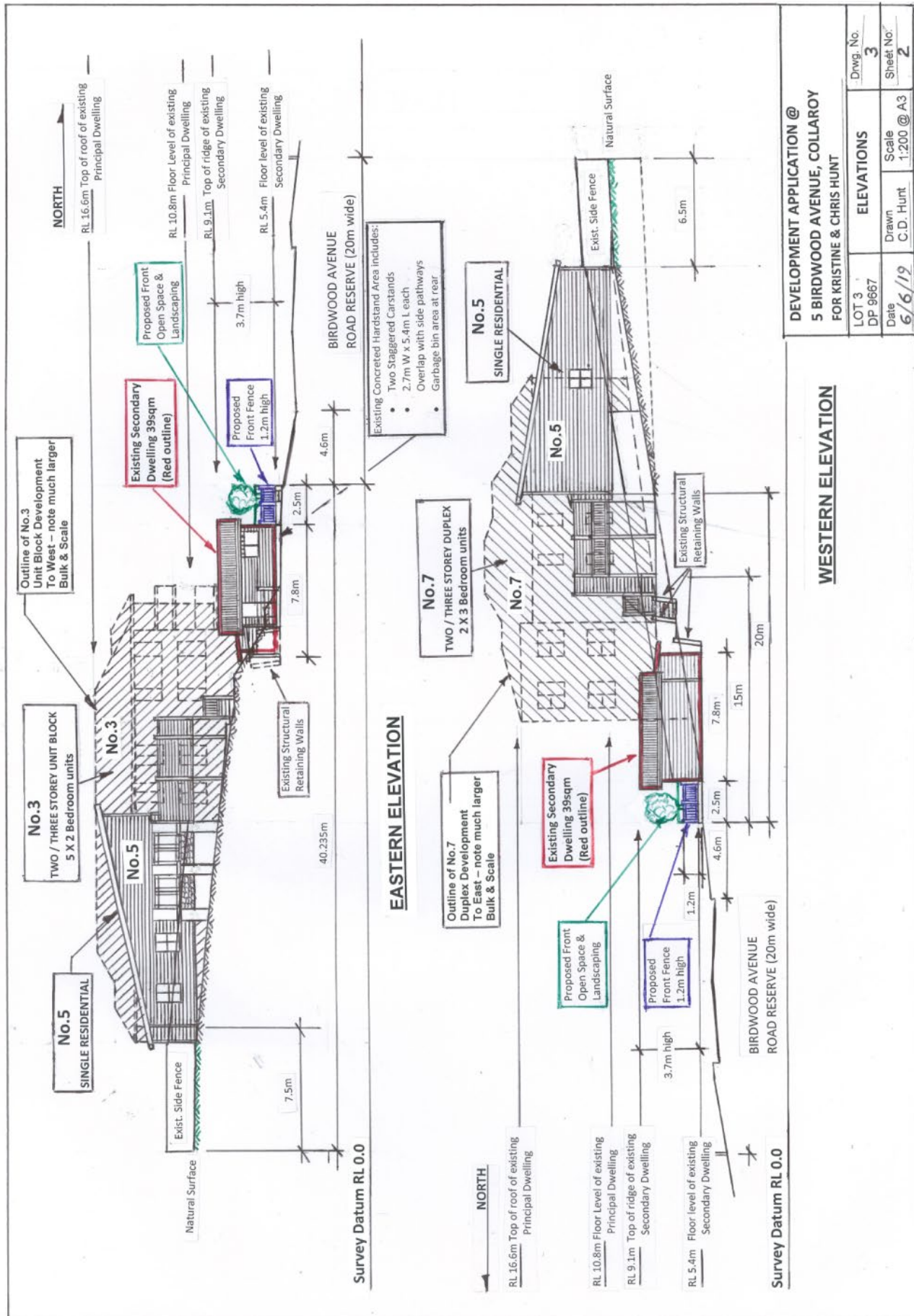
RECOMMENDATION

THAT Council as the consent authority REFUSE Development Consent to REV2020/-- Review of determination to DA2019/0616 proposed to regularise the use of a building as a Secondary dwelling, with car parking and front fence at Lot 3 in DP9667, 5 Birdwood Avenue, Collaroy for the reasons printed below:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan 2011.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan 2011.







ITEM 3.2	DA2019/0595 - 21 PINE STREET, MANLY - ALTERATIONS AND ADDITIONS TO A SEMI DETACHED DWELLING
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/285764
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant **deferred commencement approval** to DA2019/0595 for alterations and additions to a semi detached dwelling on land at Lot 1 DP 936960, 21 Pine Street, Manly, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0595
Responsible Officer:	Adam Urbancic
Land to be developed (Address):	Lot 1 DP 936960, 21 Pine Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	James Patrick Willisicroft Paula Narissa Willisicroft
Applicant:	Paula Narissa Willisicroft
Application Lodged:	11/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/06/2019 to 04/07/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 11.67%
Recommendation:	Deferred Commencement Approval
Estimated Cost of Works:	\$ 269,000.00

EXECUTIVE SUMMARY

The development application seeks consent for alterations and additions to an existing semi-detached dwelling, which primarily comprises the construction of a first floor addition.

The semi-detached dwelling forms part of a locally listed heritage item and the subject site is also located within the Pittwater Road Conservation Area.

The application has been referred to the Development Determination Panel for determination as the application seeks to vary the development standard under Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013 by more than 10%. Specifically, the proposed development provides a Floor Space Ratio (FSR) of 0.67:1, when the permitted FSR is 0.6:1, therefore resulting in a percentage variation of 11.67%.

The key issues considered in the assessment of the application have been the gross floor area of the dwelling, side and rear setbacks, open space and landscaping, and parking, as well as heritage considerations relating to the overall height of the building. Council's Heritage Advisor has reviewed the proposed development and has recommended that minor design changes be made to lower the roof ridge height and also the gutter line to ensure that the development retains the heritage significance of the building. These recommendations have been included within a deferred commencement condition, to allow Council's Heritage Advisor to review the full set of amended plans prior to the consent being activated.

As a result of the public exhibition process, no submissions were received for the application.

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

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for alterations and additions to an existing semi-detached dwelling, specifically the following works:

- minor repairs to the existing eastern wall of the front porch;
- minor internal works to the existing ground floor of the dwelling to accommodate a new staircase and minor external works to remove the existing window on the southern elevation of the building;
- construction of a new first floor addition comprising a master bedroom, ensuite and walk-in robe, including the installation of windows on the northern, western and southern elevations and two (2) skylights within the first floor roof; and
- installation of a 6.6kW solar system on the new first floor roof.

Amended Plans and Additional Information

During the assessment process, the applicant provided amended plans and additional information to address a number of areas of non-compliance and insufficient information relating to the proposed development, as originally submitted, which could not be supported by Council. The amended plans included greater detail of the proposed solar system, the provision of a setback from the eastern side boundary to the first floor wall to ensure that all of the building is contained within the subject site, clarification of the overall height of the building and confirmation that the proposed chimney is to service the existing gas fireplace. The additional information submitted included a geotechnical report and a revised Clause 4.6 Variation Statement. The amended plans resulted in a similar scope of works to the original proposal, and is consistent with the detailed description above. As the amendments were minor in nature, the development application was not required to be re-notified.

ASSESSMENT INTRODUCTION

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

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

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.2 Heritage Considerations
 Manly Development Control Plan - 3.8 Waste Management
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 1 DP 936960 , 21 Pine Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Pine Street.</p> <p>The site is irregular in shape with a frontage of 7.03m along Pine Street and an average depth of 31.09m. The site has a surveyed area of 202.2m².</p> <p>The site is located within the R1 General Residential zone and accommodates a one (1) storey brick semi-detached dwelling with a metal roof located towards the street frontage and a detached shed in the rear yard.</p> <p>The site has a gentle slope with a fall from the rear of the site towards the street frontage.</p> <p>The site contains minimal vegetation with a small front garden and perimeter planting in raised garden beds surrounding the rear yard.</p> <p>The semi-detached dwelling on the site forms part of a locally listed heritage item. The subject site is also located within the Pittwater Road Conservation Area.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one (1) and two (2) storey semi-detached dwellings and</p>

single dwelling houses of varying architectural styles to the north, west and south of the site, with a service station located to the north-east of the site and a mixed-use development comprising residential and business premises located to the east of the site.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended architectural plans and shadow diagrams, a revised Clause 4.6 Variation Statement and a geotechnical report.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>(iii) Economic Impact</p> <p>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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p><u>General Comments:</u></p> <p>Environmental Health has reviewed this application with regard to extension of the existing chimney. Although the chimney is existing or "historical", any new installations have to comply with current standards. In a practical sense, Environmental Health understands that a new system would not have a historical look. Perhaps a solution is to fit a new wood-fired heater inside of the brick-work.</p> <p>Our review found that none of the required information was submitted to Council with the application and therefore recommend refusal.</p> <p>The following information and provisions are required if the applicant wishes to install a new wood-fired heater:</p> <ol style="list-style-type: none"> 1. Provide details from an appropriately qualified person that the proposed heater meets the emission control requirements of AS 4013.2014

Internal Referral Body	Comments
	<p>2. Provide evidence from the installer that the proposed heater will meet the requirements of AS/NZS 2918.2001</p> <p>3. Provide plans demonstrating that the flue pipe will extend not less than 4.6m above the top of the floor protector</p> <p>4. If the flue is 3m or less in horizontal distance from the highest point of the roof, is the top of the flue at least 600mm above highest point of the roof?</p> <p>5. If the flue is over 3m metres in horizontal distance from the highest point of the roof, is the height of the flue at least 1000mm above the roof penetration?</p> <p>6. Does the topography of the site or likely weather patterns or configuration of nearby dwelling/s indicate a potential to cause a smoke nuisance (Include on site plan)?</p> <p>7. Are there any significant trees or other environmental or structural factors in the immediate vicinity that may cause a smoke down draught (Include on site plan)? NOTE: If the answer to questions 6 or 8 is YES, consideration should be given to not installing the Solid Fuel Heater, or relocating the heater to a more appropriate location in order to meet the above requirements</p> <p>8. The application must contain site, floor and elevation plans drawn to a scale of 1:100 or 1:200 clearly demonstrating the location of the proposed heater and the proposed flue in relation to the roof line of the dwelling and the closest neighbouring dwelling/building.</p> <p>9. Again, specifications of the appliance to be installed indicating compliance with AS/NZS 2918:2001 and the Building Code of Australia.</p> <p><u>Recommendation:</u></p> <p>REFUSAL</p> <p><u>Planner Comment:</u></p> <p>The applicant has confirmed that the development application does not include a solid-fuel heater, with the gas fireplace retained instead. The requested information is only relevant to the installation of a solid-fuel heater and it has been confirmed with Council's Environmental Health Officer that there are no objections to the retention of the existing gas fireplace.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed development generally complies with the flood related requirements of the DCP and LEP.</p> <p>It comprises addition of a first floor, and a new access stairwell on the ground floor.</p> <p>The first floor addition is above the Flood Planning Level of 6.3m AHD.</p>
Strategic and Place Planning (Heritage Officer)	<p>HERITAGE COMMENTS</p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to heritage as the subject property is part of Item 1195 - Group of 5 houses, listed in Schedule 5 of</p>

Internal Referral Body	Comments		
	Manly LEP 2013 and is within Pittwater Heritage Conservation Area . It is also in the vicinity of heritage items; Item I223 - Street Trees and Item I2 - All stone kerbs .		
	Details of heritage items affected		
	Details of the items as contained within the Manly Heritage Inventory are:		
	Item I195 - Group of 5 houses		
	<u>Statement of significance:</u> Listed as fine examples of five late Victorian cottages; two groups of two terraced and one freestanding.		
	<u>Physical description:</u> Four late Victorian cottages terraced in two groups of two. Originally rendered brick (now partly striped) with late Victorian ornament and architectural device. Also one freestanding cottage (no. 23). The four terraces have elaborate party wall ornament in render with timber brackets and verandah posts; cottage has mixture of cast iron and timber decoration. All have iron roofs (some re-roofed), rendered chimneys with original pots and new fences.		
	Pittwater Heritage Conservation Area		
	<u>Statement of significance:</u> This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.		
	<u>Physical description:</u> The streetscape of Pittwater is a winding vista of the late 19th century and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to its scale, width and the number of extant Victorian structures. Within the streetscape there are number of individually significant buildings which are listed separately. Adjacent streets generally comprise a consistent pattern of one and two storey residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical vegetated backdrop.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage	No	

Internal Referral Body	Comments
	Register
	NSW State Heritage Register
	National Trust of Aust (NSW) Register
	RAIA Register of 20th Century Buildings of Significance
	Other
	Consideration of Application
	<p>The proposal seeks consent for alterations and a first floor addition to an existing dwelling. Proposed works are mainly at the rear of the property and away from the street, therefore is unlikely to adversely impact upon the significance of the heritage item and the conservation area. It is considered that the reduction of the proposed ridge height and gutter level will minimise the impact on the heritage item. The ridge height of the first floor addition should not be any higher than RL13.295 with a 23 degree slope to the roof. This will allow to reduce the first floor gutter level as well.</p> <p>Therefore, the proposal is supported on heritage grounds, subject to a condition of consent.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required?No Has a CMP been provided?No Is a Heritage Impact Statement required?Yes Has a Heritage Impact Statement been provided? Yes</p>
	Further Comments
	<p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 11 May 2020</p>
	<p><u>Planner Comment:</u> After consultation with Council's Heritage Advisor, it has been determined that the requirement for a full set of amended architectural plans depicting the reduced ridge height and roof pitch should be placed as a deferred commencement condition, rather than a condition to be satisfied prior to the issue of a Construction Certificate. Refer to the discussion under Clause 3.2 of the Manly Development Control Plan 2013 for further heritage considerations.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been

External Referral Body	Comments
	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. A350178, dated 10 June 2019).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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	7.63m	N/A	Yes
Floor Space Ratio:	FSR: 0.6:1 (121.32m ²)	FSR: 0.67:1 (135.1m ²)	11.67% (13.78m ²)	No

Note: Clause 4.1.3.1 of the MDCP enables Council to consider an exception to the Floor Space Ratio under Clause 4.4 of the MLEP 2013 where the site area is less than the Minimum Subdivision Lot Size required under Clause 4.1 of the MLEP 2013. In this case, the surveyed lot size is 202.2m² and the minimum lot size under Clause 4.1 of the MLEP 2013 is 250m². The below calculations of the gross floor area of the proposed development have been based on the minimum lot size and demonstrate that the proposed development is compliant with the allowable variation. Further consideration of the exception to the development standard under Clause 4.4 of the MLEP 2013 is detailed within this report under Clause 4.6 of the MLEP 2013.

Control	Allowable Variation	Proposed	Complies
Exceptions to Floor Space Ratio for Undersized Lots:	FSR: 0.6:1 (150m ²)	FSR: 0.54:1 (135.1m ²)	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1
Proposed:	0.67:1
Percentage variation to requirement:	11.67%

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:

- that the subject site is less than the minimum lot size (250m²) adopted under Manly Local Environmental Plan 2013 for the site;
- that the existing dwelling is an item of heritage as identified under Manly Local Environmental Plan 2013;
- that the bulk and scale of the first floor addition is consistent with neighbouring dwellings and allows for the preservation and conservation of the heritage listed building;
- that the development will not result in any additional amenity or view impacts to adjoining properties; and
- that the development will largely retain the existing streetscape character and will not have an adverse visual impact on the streetscape of Pine Street and Smith Street.

The reasons provided by the applicant are well-founded in that the subject site is below the current minimum lot size requirement for the site and contains an item of heritage, both of which restrict the viability of compliant development on the site. The proposed development is of an appropriate bulk and scale and ensures that the heritage significance of the building is reasonably conserved. The amenity of the adjoining properties is also reasonably preserved and the single storey appearance of the building will be largely retained within the streetscape of Pine Street.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the

objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

Due to the siting of the proposed first floor addition towards the rear of the existing building, the additional bulk and scale will be minimised when viewed within the streetscape of Pine Street and Smith Street and allows for the single storey appearance of the building to be retained when viewed from Pine Street. This will ensure that the 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,

Comment:

The proposed density and bulk of the building is appropriate in relation to the site area and is similar to that of adjoining and surrounding properties, and does not obscure any important landscape and townscape features, including the heritage significance of the building.

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

Comment:

The proposed development maintains an appropriate visual relationship between the new development and the existing character of the area by being sympathetic to the development on adjoining and surrounding properties in terms of the siting of the first floor addition and the retention of the single storey appearance of the building within the streetscape and landscape of Pine Street.

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

Comment:

The proposed development has been designed to minimise adverse environmental impacts on the use and enjoyment of adjoining land by ensuring that privacy mitigation measures have been provided where necessary and by providing appropriate building separation. The proposed development retains the existing single storey appearance of the building within the streetscape, therefore minimising adverse environmental impacts to the public domain, including Pine Street.

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

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

Comment:

The subject site is located within a residential zone, therefore this objective is not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development involves alterations and additions to an existing semi-detached dwelling which will continue to provide for the housing needs of the community.

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

Comment:

The proposed development retains the existing use of the building as a semi-detached dwelling and the higher density suburban character of the area.

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

Comment:

As above, the proposed development involves alterations and additions to an existing semi-detached dwelling and does not impact on the ability to enable other land uses to provide facilities or services to meet the day to day needs of residents on adjoining or nearby properties.

Conclusion:

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

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

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

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

building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 202.2m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 6.5m (based on no gradient)	6.32m	N/A	Yes
	W: 6.5m (based on no gradient)	6.5m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.2m	N/A	Yes
	Pitch: maximum 35 degrees	23 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	6m	14.01m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.11m (based on wall height)	0.18m	91.47% (1.93m)	No
	W: 2.17m (based on wall height)	0.95m	56.22% (1.22m)	No
	Windows: 3m	E: No windows	N/A	Yes
		W: 0.95m	68.33% (2.05m)	No
4.1.4.4 Rear Setbacks	8m	6.93m	13.38% (1.07m)	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (111.21m ²)	33.63% (68m ²)	38.85% (43.21m ²)	No (as existing)
	Open space above ground 25% of total open space	N/A	N/A	N/A
4.1.5.2 Landscaped Area	Landscaped area 35% of actual total open space (23.8m ²)	22.43% (15.25m ²)	35.91% (8.55m ²)	No (as existing)
	1 native tree	No trees	100% (1 tree)	No (as existing)
4.1.5.3 Private Open Space	18m ² per dwelling	41m ²	N/A	Yes
Schedule 3 Parking and Access	Semi-detached dwelling: 2 spaces	No spaces	100% (2 spaces)	No (as existing)

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	N/A
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.2 Pittwater Road Conservation Area	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

Council's Heritage Advisor provided referral comments on 26 July 2019 stating that the proposed development was unacceptable as it would overwhelm the heritage item and the adjoining items, and set an undesirable precedent in the conservation area based on the change in scale, bulk of the

addition, increased wall height, increased ridge height, and reduction in curtilage. It was also stated that the proposed development did not achieve the requirements of Clause 3.2.1.1 and 3.2.2.1 of the Manly Development Control Plan 2013 (MDCP 2013) and therefore Council's Heritage Advisor recommended that the application be refused.

Based on concerns raised by the applicant regarding the findings of Council's Heritage Advisor, a review of the proposed development was undertaken by Council's new Heritage Advisor on 2 January 2020, with the review finding that as the proposed works were mainly at the rear of the property and away from the street, it was unlikely that the works would adversely impact upon the significance of the heritage item and the conservation area, subject to a recommended condition to lower the roof pitch to be similar to that of the adjoining dwelling at 23 Pine Street. The recommended condition is copied below for reference:

- **Reduced ridge height to first floor extension**

The ridge height should be reduced to be similar to the ridge height of 23 Pine Street. The ridge height shown on the architectural drawings for 23 Pine Street is RL12.84. Proposed ridge height for 21 Pine Street should not exceed RL13.04.

Reason: To allow the existing dwelling to be read in it's original single storey terrace form and minimise the impact upon the heritage item.

A further review by the Assessing Officer found that there was inadequate information provided on the architectural plans to determine whether the requirements of the recommended condition would be able to be satisfied without major changes to the design of the building. This was raised as part of a request for additional information, dated 16 April 2020, the details of which are provided earlier in this report.

In response to this request, the applicant submitted architectural plans depicting the northern elevation and a section of three (3) design options, with the applicant stating that they were happy for Council to determine which would be acceptable from a heritage perspective. The three (3) options are detailed below:



Figure 1: Plans depicting Option 1 - Roof as Originally Proposed (Ridge RL 13.58 and 23 degree roof pitch).



Figure 2: Plans depicting Option 2 - Reduced Ceiling Height (Ridge RL 13.295 and 23 degree roof pitch). Please note that the northern elevation contains an error in that it depicts the line for the correct roof ridge height, but the roof form has not been changed from Option 1.



Figure 3: Plans depicting Option 3 - Compliance with Recommended Condition (Ridge RL 13.04 and 11 degree roof pitch).

Upon review of the three (3) options, Council's Heritage Advisor has recommended that the proposed development adopt Option 2, with the recommended condition amended to reflect these changes. As Council's Heritage Advisor has stated that a full set of amended plans depicting Option 2 should be submitted for review by Council, the recommended condition will be placed as a deferred commencement requirement to be satisfied prior to the consent being activated.

It is considered that Option 2 provides for alterations and additions to the building which will complement and respect the form and scale of the original building, the adjoining and surrounding buildings, and the buildings located within the heritage conservation area.

3.8 Waste Management

A detailed Waste Management Plan has not been submitted with the application. To ensure proper disposal of demolition and builder's wastes, a condition has been included in the consent requiring details prior to the issue of a Construction Certificate.

4.1.3 Floor Space Ratio (FSR)

The proposed development has a gross floor area of 135.1m², which equates to a Floor Space Ratio (FSR) of 0.67:1, whereas the permitted gross floor area is 121.32m², which equates to a FSR of 0.6:1. This results in a variation of 11.67% or an additional 13.78m² of gross floor area.

The exceptions under Clause 4.1.3.1 of the MDCP 2013 for undersized lots, as well as those under Clause 3.2.5.2 for heritage listed properties, cannot legally vary the development standard under Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013), but may form part of the considerations for the granting of an exception under Clause 4.6 of the MLEP 2013.

A detailed assessment of the applicant's request for an exception to the FSR development standard has been undertaken pursuant to the provisions of Clause 4.6 of the MLEP 2013 within this report.

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

Description of non-compliance

The proposed development provides a 0.18m setback from the eastern side boundary to the first floor wall and a 0.95m setback from the western side boundary to the first floor wall, with the western wall also containing windows facing the side boundary. The proposed development provides a 6.93m setback from the rear boundary to the first floor wall.

The control requires a 2.11m setback from the eastern side boundary and a 2.17m setback from the western side boundary, based on the respective actual wall heights, and states that all new windows to habitable rooms of the dwelling that face the side boundary are to be set back at least 3m from the side boundary. The control also requires a 8m rear setback.

Merit consideration:

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

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

Comment:

The proposed development maintains and enhances the existing streetscape of Pine Street by siting the first floor addition towards the rear of the existing building to ensure that the desired spatial proportions of the street and the row of heritage listed cottages is retained as primarily single storey when viewed from the street. The existing vegetation within the front yard is to also be retained to maintain the existing landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

Although the proposed wall and windows on the western elevation are located within the required side setback area, the proposed development ensures that privacy is maintained by providing a frosted finish to the windows to the master bedroom, up to a height of 1.3m from finished floor level. It is also noted that the eastern elevation of the adjoining dwelling at 23 Pine Street does not contain any windows. Similarly, the windows on the southern elevation of the building have a frosted finish up to a height of 1.3m from finished floor level to maintain a reasonable level of privacy to the private open space areas of the adjoining dwellings. Despite the non-compliant side and rear setbacks, the proposed development provides equitable access to light, sunshine and air movement, which is facilitated by the lot orientation and layout. The proposed development also facilitates view sharing and maintains adequate space between buildings to limit impacts on view and vistas from private and public spaces. As above, the first floor addition has been sited towards the rear of the existing building and will therefore retain the existing single storey appearance of the dwelling when viewed from Pine Street. The proposed development does not change the existing traffic conditions surrounding the site. It is therefore considered that the proposed development maintains and enhances local amenity.

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

Comment:

The proposed development promotes flexibility in the siting of the building by locating the first floor addition primarily above the portion of the existing building which is not part of the original cottage, which although results in a non-compliant rear setback, allows a greater amount of the original fabric to

be retained.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development maintains natural features by retaining all existing vegetation on the site, which although is minimal, is reasonable based on the constraints of the site, including its overall size and the siting of the existing building, and its dense suburban context. The subject site does not adjoin any public open space or national parks, and based on the nature of the proposed development, it is considered that the development does not unduly detract from the context of the site. The provisions of State Environmental Planning Policy No 19 - Bushland in Urban Areas are not applicable to the subject site.

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

Comment:

The subject site is not classified as bush fire prone land, therefore, this objective is not applicable.

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.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposed development provides 33.63% or 68m² of the site area as total open space, of which 22.43% or 15.25m² is landscaped area. The proposed development also does not provide any native trees.

The control requires a minimum of 55% or 111.21m² of the site area to be provided as total open space, with 35% or 23.8m² of the actual total open space required to be provided as landscaped area. The control also requires a minimum of one (1) native tree to be provided on the site.

Merit consideration:

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

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

Comment:

The proposed development retains all existing vegetation on the site, and the site does not contain any important landscape features.

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

Comment:

As the proposed development is located entirely above the existing building footprint, the total open space at ground level and soft landscaped areas on the site will be retained as existing. When considering the site constraints, including its overall size and the siting of the existing building, the maintenance of the existing situation is considered to be reasonable and acceptable. Furthermore, it is not considered to be appropriate to require the planting of a native tree, given the site constraints.

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

Comment:

The proposed development maintains and enhances the amenity of the site by providing privacy treatments to the first floor windows on the western and southern elevations of the building. As the proposed development is located towards the rear of the existing building, the single storey appearance of the building is maintained within the streetscape. Furthermore, the proposed development maintains and enhances the amenity of the surrounding area by being sited above the existing building footprint, providing windows in appropriate locations to maintain privacy, and by complementing the heritage aspects of the adjoining buildings.

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

Comment:

The proposed development retains the existing amount of porous landscaped areas and surfaces on the site.

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

Comment:

The proposed development does not include the planting of any noxious or invasive weeds and retains the existing amount of soft landscaped areas, which are easy to maintain and keep weed-free.

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

Comment:

The proposed development maximises wildlife habitat and the potential for wildlife corridors by retaining all existing vegetation within the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The proposed development provides no parking spaces within the site and the site does not currently provide any off-street parking. Schedule 3 of the MDCP 2013 requires two (2) parking spaces to be provided for semi-detached dwellings, however, Clause 3.2.5.1 provides exceptions to the parking requirements for alterations and additions to heritage items where car parking will adversely impact on the item.

Due to the siting of the existing building in close proximity to the front boundary, it would not be possible to provide any of the required parking spaces without the demolition, or partial demolition, of the building. The front facade of the building forms part of its significance and the loss of any of the existing fabric would have an adverse impact on the heritage item.

Based on the above, it is considered that the application of an exception to the provision of the two (2) parking spaces required under this control is reasonable and critical for the retention of the heritage significance of the building.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$2,690 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$269,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

CONCLUSION OF ASSESSMENT ISSUES

In summary, a detailed assessment has been required in relation to the gross floor area of the dwelling, side and rear setbacks, open space and landscaping, and parking, as well as in relation to heritage related considerations of the proposed roof ridge height and gutter line. As per the recommendation from Council's Heritage Advisor, it is recommended that the proposed roof ridge height be reduced and the gutter line lowered to ensure that the heritage significance of the building can be retained. These amendments are to be made to the approved plans and submitted to Council for review as part of a deferred commencement.

It is therefore recommended that the development application be granted deferred commencement approval.

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

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013

seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

Accordingly Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Section 95 of the EP&A Regulation 2000 to DA2019/0595 for Alterations and additions to a semi detached dwelling on land at Lot 1 DP 936960,21 Pine Street, MANLY, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. **Amendments to Roof Ridge Height and Gutter Level to First Floor Addition**

The ridge height should be reduced to RL 13.295 with a 23 degree slope to the roof. The gutter level should be lowered accordingly.

A full set of architectural plans are to be submitted demonstrating compliance with the above requirements.

Reason: To allow the existing dwelling to be read in its original single storey terrace form and minimise the impact upon the heritage item.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. **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
802 19 HD 1-1, Architectural Plans	27 April 2020	High Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (Cert No. A350178)	10 June 2019	Nick Gordon
Preliminary Geotechnical Assessment (Ref: J2662)	27 April 2020	White Geotechnical Group

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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.

3. Prescribed Conditions

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

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

- A. the name of the owner-builder, and
- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) 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

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,690.00 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 \$269,000.00.

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

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

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

at www.northernbeaches.nsw.gov.au

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Waste Management Plan**

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

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

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

8. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 6.3m AHD. All existing electrical equipment and power points located below the Flood Planning Level of 6.3m AHD must have residual current devices installed to cut electricity supply during flood events.

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.

9. **Compliance with Standards**

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

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

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

10. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property: 19 Pine Street, Manly (Lot 1, DP 958770)

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 rising 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.

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:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- 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. **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.

14. **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.

15. **Road Reserve**

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

Reason: Public safety.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****16. Post-Construction Dilapidation Report**

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

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

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

17. 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.





Attachment 1, Clause 4.6 variation - Exception to Development Standards- Residential development- first floor additions to an existing dwelling house at 21 Pine Street, Manly, 2095 (Lot 1 in DP 936960) [Rev 1- 28 April 2020].

Introduction

Clause 4.1 (2) of Manly Local Environmental Plan 2013 (MLEP 13) prescribes a floor space ratio size for a building on any land.

The land in question has a site area of 202.2 sq.m

The maximum floor space ratio permitted for the development site is 0.6:1.

The maximum floor space is **121.32 sq.m**

The existing floor area of the cottage building is 96sq.m.

The proposed new first floor addition is 41sq.m.

The total floor area is **137sq.m** and exceeds the maximum floor space ratio permitted by 15.68 sq.m.

This results in a 12.92% variation.

It is recognised the development site is a local heritage item in a Victorian architectural period and was built prior to Council's controls being adopted.

Council's DCP provides insight in dealing with floor space ratio and may consider an exception to floor space ratio under MLEP 13 in relation to determining an Application for consent to erect a building on land upon which there is a building which is an item of the environmental heritage where the conservation of the item depends on allowing the exception and the development does not adversely impact on the significance of the heritage item.

In this regard, when calculating the floor space of the development, Council may consider excluding the floor space of the item of the environmental heritage when considering an exception to the LEP standard.

We believe that the works are necessary to improve amenity, preserve the heritage value of the property and to allow the damaged façade to be prepared as part of the site works. If Council sees eye to eye to this approach, then the existing floor space would be discounted. The legal mechanism of doing the Variation relates to the provisions of Clause 4.6.

In recognition of this, an objection pursuant to Clause 4.6 of the MLEP 13, seeking for a dispensation to the maximum floor space ratio control is requested.



Clause 4.6 of the MLEP 13 details exceptions to development standards and includes objectives which seek to:

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

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

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

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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



(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

The proposed additions and increased floor area contravene the maximum floor area contained within MLEP 13.

This written request seeks to justify the contravention of the standard pursuant to Clause 4.6 of the MLEP 13.

Variation sought

Floor space ratio control

MLEP 13 prescribes a floor space ratio of 0.6:1 for the site, and the maximum floor space is **121.32 sq.m.**

The existing floor area of the cottage building is 96sq.m.

The proposed new first floor addition is 41sq.m.

The total floor area is **137sq.m.**

In recognition of this, an objection is submitted pursuant to Clause 4.6 of MLEP 13.

The degree of the non-compliance equates to 15.68 sq.m.

This results in a 12.92% variation.

Written justifications for the contravention of the development standard

Pursuant to clause 4.6(3) of MLEP 13 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.

Clause 4.6(4) of MLEP 13, also states:



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

(a) the consent authority is satisfied that:

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

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

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

In relation to the matters required to be demonstrated by subclause (3) there are various ways that may be invoked to establish that compliance with a development standard is unreasonable or unnecessary, as discussed by various case studies.

Chief Justice Preston of the NSW Land and Environment Court in the case of *in Wehbe v Pittwater Council* [2007] NSWLEC 827 is used as background information.

Although the *Wehbe* case was decided in relation to State Environmental Planning Policy No 1— Development Standards ("SEPP 1") and not clause 4.6 of GLEP 14, it remains of some assistance in relation to identifying the ways in which an applicant may demonstrate that compliance with development standards is unreasonable or unnecessary in the circumstances of the case.

This case is applied in this circumstance, as it better fits the predicament of a heritage item and Council's guidelines for conservation highlights the need to discount the existing floor areas of the heritage item.

The existing cottage of a Victoria architectural period predates any minimum lot size controls and along with any of the minimum lot size requirements.

It would be unreasonable to impose a floor space ratio control on a parcel of land which is less than half of the minimum lot size and to a heritage cottage.

In the *Wehbe* case, Justice Preston said the most commonly invoked way to establish that compliance with a development standard is unreasonable or unnecessary is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSW LEC 7 Preston CJ noted at paragraph 7 that development consent cannot be granted for development that contravenes a development standard unless the consent authority:



- *Considers the cl 4.6 objections (the requirement-in cl 4.6(3)); and*
- *Was satisfied that, first, the cl 4.6 objections adequately addressed the matters required to be demonstrated by cl 4.6(3) (the requirement in cl 4.6(4)(a)(i)) and, second, the development will be in the public interest because it is consistent with the objectives of the height standard and the FSR standard and the objectives for development within the R3 zone in which the development is proposed to be carried out (the requirement in cl 4.6(4)(a)(ii)).*

In *Moskovich v Waverley Council* [2016] NSWLEC 1015, Commissioner Tour reflected on the recent decisions considering *Four2Five* and said:

- *Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the Wehbe ways of establishing compliance are equally appropriate [at 50]. One of the most common ways is because the objectives of the development standard are achieved - as per Preston CJ in Wehbe at 42-43.*
- *Whereas clause 4.6(4)(a)(ii) has different wording and is focused on consistency with objectives of a standard. One is achieving, the other is consistency. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(i) to determine whether noncompliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3). The latter being more onerous requires additional considerations such as the matters outlined in Wehbe at 70-76. Such as consideration of whether the proposed development would achieve the objectives of the standard to an equal or better degree than a development that complied with the standard.*
- *Establishing compliance with the standard is unnecessary or unreasonable in 4.6(3)(a) may also be based on "tests" 2-5 in Wehbe either instead of achieving the objectives of the standard (Wehbe test 1) or in addition to that test. The list in Wehbe is not exhaustive but is a summary of the case law as to how "unreasonable or unnecessary" has been addressed to the meet the requirements of SEPP 1.*
- *It is best if the written request also addresses the considerations in the granting of concurrence under clause 4.6(5).*

More recently, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ has further clarified the correct approach to the consideration of clause 4.6 requests including that the clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.

The objectives of the **floor space ratio** control are set out in Clause 4.4(1) (a) to (b) of MLEP 13 as follows:

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

**Assessment:**

In this case, the variation is viewed negligible and the building design concept results in a satisfactory level of residential amenity.

The bulk and scale of the first-floor addition is consistent with the neighbouring dwelling and is a desired streetscape character to allow the preservation and conservation of the cottage.

Should the addition not occur, the cottage would not be consistent with the existing and neighbouring properties which have had a level of amenity improvements.

The variation will not result in additional impacts on the amenity of adjoining properties greater than what a complying development would.

The ability to develop the site to comply in all respects with Council's LEP and DCP are not apparent as it would be unreasonable to impose a floor space ratio control on a parcel of land which is less than half of the minimum lot size and to a heritage cottage that predates any controls. The heritage cottage should not in any noticeable way be prejudiced by the exceedance to the floor space ratio and is a moderate outcome from a heritage assessment.

- (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,*

Assessment:

The density and bulk considerations are unnecessary and unreasonable for the heritage cottage. From a design point and heritage angle, the proposed first floor is recessed from the heritage fabric and the cottage contains its charm and character. No development on the first floor would be out of character.

The offsetting of the first floor will have a limited visual impact on the streetscape and will permit a clear visual separation between the ground level cottage at the building line and the new first floor addition and reduces the potential for the new first floor to dominate or overwhelm the front component of the cottage and there are no obstructions to landscape and townscape features.

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

Assessment:

The proposed first floor addition provides a positive visual relationship with the four heritage cottages, where three of the cottages have had alterations and additions to



the existing building envelopes to improve residential amenity. These alterations have set the existing and desired character.

The new addition at the rear is designed so it appears as new but respects the fabric and tonal qualities and features of the cottage

The landscape area of the site does not change as a result of the first-floor additions. All additions are located within the existing ground floor footprint and behind the existing rear building line.

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

Assessment:

In close vicinity, this section of the streetscape is characterized by various forms of residential housing and immediately adjoining properties are heritage listed that consist in 2 groups of semi-detached dwellings and a free-standing dwelling from the streetscape. These dwellings are also sited on narrow lots and have had some form of additions and alterations to improve residential amenity for the home occupiers.

Given the master bedroom windows are to be screened as showed on the architectural drawings, the proposed side setback from the western side boundary of 0.95 metres which is further recessed from the ground zero lot wall along with the rectangular and hipped form modulation, this ensures that the proposal would not result in any unreasonable amenity impact.

There are no detrimental environmental impacts on the use or enjoyment of adjoining land by way of any privacy compromises, solar access is maintained and there are no view corridors to be affected.

From the public domain, the cottage is not visible from Smith Street and the first floor is to sit higher than the ridgeline of the adjoining property at 23 Pine Street. The proposed development will not further reduce the current visual penetration into the property from Smith Street or Pine Street and this is viewed as a moderate change and is related to the topographical nature of the site.

- (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.*

Assessment:

N/A.

**Consistency with the zone objectives of Manly Local Environmental Plan 2013**

The subject site is zoned R1- General Residential under Manly Local Environmental Plan 2013.

Assessment:

The development proposal satisfies the objectives of Manly Local Environmental Plan 2013 whereby the alterations and additions are a permissible form of development.

The development provides a highly desirable and low-density form of housing that meets the community needs.

Approval of the additions still provides a low scale and appropriate form of housing and is one of the preferred varieties of housing types for the locality.

Therefore, the proposal does not result in any circumstance that would be contrary to those objectives.

Some relaxation is necessary given the sites heritage listing, and under the heritage conservation clauses and Clause 5.10 (10) Conservation incentives of MLEP 13, also states:

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

**Assessment:**

A Statement of Heritage Impact assesses the key heritage considerations and is consistent with these objects.

There are no known archaeological deposits over this site, and no excavation is proposed and thus there is no impact.

Other recommendations in lieu of a conservation management plan/specification for the project works is presented and may form as specifications for the project works or conditions of development consent.

Consistency with State and Regional planning policies**Assessment:**

The variation to the minimum lot size for dual occupancies allows for the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979.

The variation allows for a better planning outcome**Assessment:**

The variation to the floor space ratio is irrelevant and does not compromise the residential quality and presentation of the heritage cottage to the public domain.

This approach is desirable in the context of this application and is considered a better planning outcome.

The proposal following review from Council's Heritage Planner was revised to reduce the overall ridge height to improve the visual appearance.

There are sufficient environmental grounds to permit the variation**Assessment:**

The variation to the floor space ratio is insignificant in nature and the land in question is an existing small residential landholding where a heritage cottage is found and preserved with the exception of a damaged common fire blade wall.

From a streetscape point of view, the new first floor addition is of an appropriate form, architectural rhythm and scale and the cottage will continue to provide the visual element which sets the historic context and low scale and traditional form of the five cottages.



The proposal following review from Council's Heritage Planner was revised to reduce the overall ridge height to improve aesthetics.

There are no detrimental impacts, and neither are there impacts upon the conservation area.

The proposed additions are consistent with the similarly constructed addition for the neighbouring property and architectural intent.

The variation is in the public interest and will not have unreasonable impact on amenity of the area where the design of the additions is compatible with the streetscape in terms of bulk, scale and mass and meets the Council LEP and DCP objectives with respect to heritage conservation.

Assessment:

No circumstances have been identified to indicate that the proposal would not be in the public interest.

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

Yes, this written request demonstrates that the land in question is an existing narrow lot and Torrens title residential landholding and categorised as a built-up area and some degree of exceedance is expected.

The dispensation sought justifies contravening the development standard and approval would be compatible with the established built forms.

The proposal following review from Council's Heritage Planner was revised to reduce the overall ridge height to improve the visual appearance.

The architectural language for the new addition is in harmony and unlikely to distract of the original features of the dwelling façade at Pine Street and is consistent with the character of neighbouring dwellings that are of a 1 and 2 storey-built form on a neighbouring heritage property and is consistent with the heritage conservation strategy to preserve the cottage identified by Clause 5.10 (10).

Does the Council have delegation to exercise the concurrence function of the Director-General of the Department of Planning and Infrastructure for development that contravenes a development standard? If so:

(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.



In response to the above it is noted:

Pursuant to the Notification of assumed concurrence of the Director-General under clause 4.6(4) (and the former clause 24(4)) of the Standard Instrument contained in Planning Circular PS 08-003 (dated 9 May 2008), the concurrence of the Director-General of the Department of Planning and Infrastructure under clause 4.6(4)(b) of Manly Local Environmental Plan 2013 may be assumed to the granting of development consent to the development that contravenes the development standards for floor space ratio in clause 4.1 B(2)(a) of MLEP 2013;

The proposed development and variation from the development standard does not raise any matters of significance for State or regional environmental planning; and

Variation from the adherence to the numerical floor space ratio standard will be not be detrimental to the orderly use of the site and there is no public benefit in maintaining the development standard in this instance.

Conclusion

We consider flexibility from the floor space ratio can be applied under Clauses 4.6 subclause 1(a) of MLEP 2013 as the development site is an existing residential allotment and heritage cottage and some form of flexibility needs to be applied given this feature.

It is recognised the development site is a local heritage item in a Victorian architectural period and was built prior to Council's controls being adopted.

Approval of the first-floor additions would result in a built form on an existing small residential parcel of land that is compatible with the established built form pattern at Pine Street.

Amalgamation with adjoining sites would be an unreasonable burden for the landowner who can carry out orderly development of the site and as intended by the local zoning and heritage conservation incentives.

The non-compliance equates to 15.68 sq.m and this results in a 12.92% variation and is not considered antipathetic, and the proposal is compliant in all other matters and does not result in any adverse impacts on the amenity of adjoining residents.

The proposal following review from Council's Heritage Planner was revised to reduce the overall ridge height to improve the visual appearance of the newer additions.

The revised architectural presentation is site responsive and meets the local character.

The building design concept does not adversely impact neighbouring properties and the overall bulk, scale, massing and height is consistent with the other housing in proximity to the site.



It is evident, the 12.92% variation allows for a better outcome under Clause 4.6 subclause 1(b) of MLEP 2013.

Approval relating to the 12.92% variation is acceptable given the heritage affectation and conservation incentives prescribed in the LEP, and on merit, approval will not create an undesirable precedent.

The repair works for the front façade/common fire wall meet the intent of Clause 5.10 (10) Conservation incentives of MLEP 13 and other recommendations in lieu of a conservation management plan/specification for the project works is presented.

We consider that compliance with the development standard is unreasonable and unnecessary in this case and that there are sufficient environmental planning grounds to justify the contravention from the development standard under Clauses 4.6 subclause 3(a) and (b) of MLEP 2013.

Therefore, the written justifications for contravening the floor space ratio standard is well founded and worthy of support.

This Clause 4.6 variation is forwarded to Council in support of the development proposal for improvement works by way of first floor additions to an existing attached dwelling/cottage at 21 Pine Street, Manly, and this request be looked upon favourably by Council.

Prepared by:

Momcilo (Momo) Romic
BTP (UNSW), MEM (UNSW)
NSW Builder Licence No. 252856C
Dated: 28 April 2020

ITEM 3.3	DA2019/0856 - 1 MULGOWRIE CRESCENT, BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/285779
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0856 for alterations and additions to a dwelling house on land at Lot 9 Sec 58 DP 758044, 1 Mulgowrie Crescent, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0856
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Responsible Officer:	Rhiannon McLardy
Land to be developed (Address):	Lot 9 DP 758044, 1 Mulgowrie Crescent BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Leanne Hourigan Balfour
Applicant:	Richard Balfour

Application Lodged:	09/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/08/2019 to 02/09/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 140,000.00
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The proposal seeks consent for alterations and additions to a dwelling house at 1 Mulgowrie Crescent, Balgowlah Heights. The proposed works are an extension of the first floor of the dwelling including the construction of a balcony. Amended plans, reducing the extent of the works, have been accepted for this application. The proposal is referred to the Development Determination Panel (DDP) for review and determination, given the history of the site and view loss concerns.

The proposed development required a merit assessment in relation to the maintenance of views, height of buildings and setback controls of the Manly development Control Plan (MDCP 2013), though the non-compliant elements were minor and acceptable on merit.

The development as originally proposed received two objections. Concerns raised include streetscape, view loss and floor space ratio. A reduction in the extent of works is considered to have fully resolved the concerns of one objector.

Issues raised in the remaining submission have been addressed in this report and in summary do not require refusal or further redesign of the proposal.

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

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 seeks consent for the following works:

- Extension of first floor addition, and
- Construction of first floor balcony.

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The original proposal submitted to Council sought consent for a greater extension of the first floor addition; along the north-west elevation towards the north-east, and along the south-east elevation towards the south-west.

Following a review of the submitted information and submissions, a letter was sent to the applicant on 7 November 2019 identifying issues with setbacks, floor space ratio (FSR) and view loss.

Height poles were erected by the applicant to clarify the proposed extent of view loss and a survey confirming the accuracy of the height poles was received 5 December 2019.

In response to the letter, amended plans deleting the proposed north-east extension of the north-west elevation and reducing the south-west extension of the south-east elevation were accepted by Council 31 January 2020.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 9 DP 758044 , 1 Mulgowrie Crescent BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-western side of Mulgowrie Crescent.</p> <p>The site is irregular in shape with a frontage of 21.725m along Mulgowrie Crescent and a depth of 45.3m along the south-eastern boundary. The site has a surveyed area of 624.4m².</p> <p>The site is located within the R2 - low density residential zone and accommodates .</p> <p>The site slopes steeply away from Mulgowrie Crescent with an average slope of approximately 16%.</p> <p>The site contains a rear yard with lawn with gardens along the north-west, south-west and south-east boundaries.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one-, two-and three-storey dwelling houses.</p>

Map:



SITE HISTORY

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

Application **11.2015.142.1** for Alterations and additions to an existing dwelling house including a rear deck was on 22 October 2015 by Council Staff

Application **16.2015.154.1** for Construction of a swimming pool and landscaping was determined on 17 September 2015 by Private Certifier

Application **16.2015.149.1** for Alterations and additions to an existing dwelling house including removal of an internal wall and external doors to rear elevation was determined on 14 September 2015 by Private Certifier

Application **5.1998.128.1** for DA0128/98 Additional Storey and Renovations To Dwelling was approved on 27 August 1999 by Council Land Use Management Committee.

The application included amended plans for the first floor addition to address view loss concerns raised by objectors, including at 24 Tabalum Rd and 28 Tabalum Rd.

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

Section 4.15 Matters for Consideration'	Comments
	policy was completed on 13 April 2018.
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&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to Floor Space Ratio and View Loss.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Catherine Gorrie [Bushfire Consulting Services Pty Ltd], dated 7 August 2019) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Dennis Ravi Mrs Senaa Ravi	28 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr Anthony Carmelo Raco	24 Tabalum Road BALGOWLAH HEIGHTS NSW 2093

The amended design was not re-notified as the amendment was minor and does not result in a greater environmental impact. The works as originally proposed received two submissions. The amended design was considered to fully resolve all issues raised in one of the submissions (28 Tabalum Road). The other author of the other submission (24 Tabalum Road) was informed by email of the amended plans and given fourteen days within which to provide an additional or amended submission.

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

- View Loss
- Streetscape
- Floor space ratio

The matters raised within the submissions are addressed as follows:

- **View Loss**
Concern has been raised that the proposed works will make the dwelling non-compliant with the view loss principles.
Comment:
Concern has been raised with regard to the loss of views from the the dwelling at 24 Tabalum Road. A full assessment of this issue has been included in this report. In summary the proposal is consistent with the Land and Environment Court Planning Principle and the View Sharing provisions of the Manly DCP. The issues do not warrant refusal of the application.
- **Streetscape**
Concern has been raised as to the impact that the proposed works will have on the streetscape.
Comment:
The design, as amended, will have negligible impact on the streetscape. The proposed works are confined to the rear of the dwelling.
- **Floor space ratio**
Concern was raised that the proposed development will not be compliant with floor space ratio (FSR).
Comment:
The works, as originally proposed, were above the required FSR. The proposal as amended is compliant with the FSR requirements for this site.

REFERRALS

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

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been

External Referral Body	Comments
	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. A355189_02, dated 15 January 2020).

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	8.35m	N/A	Yes
Floor Space Ratio	FSR: 0.4:1 (249.76sqm)	FSR: 0.39.9:1 (249.2sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 624.4m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings/ 950m ²	1 (existing)	N/A	No (existing)
	Dwelling Size: 129sqm		N/A	Yes
4.1.2.1 Wall Height	NW: 7.7m (based on gradient 1:5.06)	7.7m	N/A	Yes
	SE: 7.6m (based on gradient 1:5.53)	7.7/7.85m	1.3%/3.29%	No
4.1.2.2 Number of Storeys	2	2/3		No

4.1.2.3 Roof Height	Height: 2.5m	1.6m	N/A	Yes
	Parapet Height: 0.6m	0m	N/A	Yes
	Pitch: maximum 35 degrees	20.4 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	8.3m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.3m (wall height of balcony NW) 2.57m (wall height NW)	1.226m (balcony) 1.226 (wall)	46.7% 52.3%	No No
	2.62m - SE	4.28m	N/A	Yes
	Windows: 3m	1.226m	59.13%	No
4.1.4.4 Rear Setbacks	8m	18.54sqm	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	59.94%(374.3sqm)	0.1%	No
	Open space above ground 25% of total open space	20.95%(78.9sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	56.30% (212.06sqm)	N/A	Yes
	3 native trees	0 trees	100%	No (existing)
4.1.5.3 Private Open Space	18sqm	>18sqm	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	0m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Description of Non-compliance

The proposed rear extension will block certain views from 24 Tabalum Road, Balgowlah Heights.

Merit consideration:

An objection has been received in relation to view loss from 24 Tabalum Road on the original and amended plans. View loss issues raised by objectors at 28 Tabalum Road have been resolved by the amended plans.

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and

future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example 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, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

No. 24 Tabulam has views of Middle Harbour, specifically of Sailors Bay and Chatswood to the east, as well as Chinaman's Beach to the south and St. Leonards and North Sydney. The view which has the potential for being disrupted is the distant view of the section of Middle Harbour known as Sailors Bay.



View from west side of front balcony (including Sailors bay and Chatswood)



View from east side of front balcony (including Chatswood - note: Sailors Bay not visible from this position)



View of Middle Harbour from balcony, 24 Tabalum Rd (this view is not affected by the proposed works)



View from front bedroom, 24 Tabalum Rd (Photo taken before height poles in place - access not available to bedroom on subsequent site visit)

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:

Views of Middle Harbour are obtained across the front boundary, from the external balcony as well as a bedroom, with some additional views from the living room (located just inside of the balcony). Views of Sailors Bay are accessible from the western side of the front balcony and the bedroom and will continue to be accessible from the bedroom.

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 percent 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:

Due to the extension of the south-eastern wall, it is expected that the view of Sailors Bay will be lost from some positions at 24 Tabalum Road including from the southern side of the front balcony. Views of

Middle Harbour further to the south will remain unaffected by the proposed works. Sailor's Bay is not currently visible from the northern side of the balcony. Some views of Sailors Bay will continue to be accessible from the bedroom.

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:

The proposed works do not comply with the required wall height control or the side setback control to the north-west boundary. While the proposal will result in some loss of view from 24 Tabalum Rd from certain positions, some views of Middle Harbour remain and the view of Sailors Bay is retained from other positions on the property. The non-compliant side boundary setback on the north-western elevations is consistent with the existing north-western setback. The non-compliance with the wall height control is minor and has been judged to be consistent with the objectives of the MDCP. The dwelling continues to be under the maximum height of buildings. The design was amended from what was originally proposed to assist in maintaining the view of Sailors Bay from a greater proportion of 24 Tabalum Rd. Further design change of the proposed works to create full compliance with the wall height control would not allow for any practical extension of the south-eastern elevation. The proposal is considered to be reasonable in this context and will allow for the reasonable sharing of views.

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

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

Description of Non-compliance

Part of the dwelling is 3-storeys where the requirement is for no more than 2-storeys. The average fall under the south-eastern wall is 1:5.53, however the slope is not consistent. There are two sections of the south-east wall that are non-compliant with the height requirement of 7.6m. The maximum proposed wall height on the south-east elevation is 7.85m.

Merit Consideration

The Manly DCP 2013 does not include objectives that directly relate to the wall height control of the Manly DCP 2013. Instead it refers to the objectives of clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. In this regard, the development is assessed under the relevant objectives below.

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 non-compliant wall heights are due to the changing slope of the land, with the dwelling having compliant wall height on the north-west elevation and continuing to be below the required maximum building height. The proposed extension of the first floor does not increase the RL of the existing first floor roof. No works are proposed to the front facade of the dwelling and it will continue to present as a two-storey dwelling to Mulgowrie Crescent.

b) to control the bulk and scale of buildings,

Comment:

No changes are proposed to the front facade of the dwelling and it will continue to present as a two-storey dwelling to Mulgowrie Crescent. The proposed minor wall height non-compliance on the south-eastern elevation is compensated by significant setbacks to the first floor from this boundary. The non-compliant wall heights are a section of 0.52m in width, with a height 0.1-0.0m above the requirement and another section 1.52m in width, 0.25-0.0m in height. The proposed works are confined to the rear of the dwelling and will have little impact on the streetscape.

c) to minimise disruption to the following:

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

Comment:

The proposal will not result in any unreasonable disruption of views to or from public spaces. A full view loss assessment is provided in *Section 3.4.3 Maintenance of Views*.

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:

Solar access continues to be provided to public and private open spaces. Access to sunlight is maintained to the rooms of adjacent dwellings inline with the objectives of Clause 3.4.1 Sunlight Access and Overshadowing.

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

Comment:

The subject site is not within or adjacent to a recreation or environmental protection zone.

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

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

Description of non-compliance

The proposed works extend the existing side setback non-compliance of 1.226m along the north-west

elevation of the site. The north-west side setback is non-compliant (to the proposed windows, rear and balcony) on the north-east elevation which all proposed a side boundary setback of 1.226. The side boundary setback is required to be 3.0m, 2.57m and 2.3m respectively.

Merit consideration:

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

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

Comment:

The proposed setback non-compliance is to the north-west boundary of the site. The proposed first floor extension towards the south-west extends the existing non-compliant north-west side boundary setback. However, the amended design deletes the originally proposed extension of the first floor towards the north-maintaining the existing street-front facade and character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

Windows proposed on the south-eastern elevation of the dwelling have a setback greater than 3 metres to the side boundary. Along the north-western elevation, the proposed windows are attached to an ensuite, walk-in robe and bedroom. No new windows are proposed from communal living areas are proposed on the north-western elevation. There is no change to solar access to the neighbouring dwelling to the north-west. View sharing is maintained satisfactorily to the requirements of the objectives of 3.4.3 *Maintenance of Views*. The proposed extension of the first floor is to the rear of the existing dwelling, preserving the front facade and streetscape and viewed from Mulgowrie Crescent. The proposed works will not affect visibility for traffic.

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

Comment:

The proposed extension of the existing first floor allows for an increase in living space for the occupants, while having no unreasonable impacts on the amenity of the subject site or neighbouring 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:

The proposal is for an extension of the existing first floor addition and does not involve the removal of any vegetation from the site. SEPP 19 does not apply to this site.

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

Comment:

The subject site is within a bush fire prone area. A bush fire risk assessment report has been included with the application stating that the proposal can comply with the aim and objectives of Planning for Bushfire Protection.

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.

4.1.5 Open Space and Landscaping

Description of Non-compliance

The proposal is for an extension of the existing first floor addition. The existing minor non-compliance with total open space remains.

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 \$ 700 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 140,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;

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

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

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

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

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

- Maintenance of views;
- Height of buildings (wall height); and
- Setbacks.

Each non-compliant element is established as acceptable on merit. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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 DA2019/0856 for Alterations and additions to a dwelling house on land at Lot 9 DP 758044, 1 Mulgowrie Crescent, BALGOWLAH HEIGHTS, 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

DA4	29/01/2020	sketchArc
DA5	29/01/2020	sketchArc
DA6	29/01/2020	sketchArc
DA7	29/01/2020	sketchArc
DA8	29/01/2020	sketchArc
DA9	29/01/2020	sketchArc
DA10	29/01/2020	sketchArc
DA11	29/01/2020	sketchArc
DA12	29/01/2020	sketchArc
DA13	29/01/2020	sketchArc

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate	15/01/2020	Phil Brown Drafting
Bush Fire Assessment Report	7/08/2019	Bushfire Consulting Services Pty Ltd

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

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Demolition, construction & use of premises	August 2019	Mrs Balfour

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

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

2. Prescribed Conditions

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

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the

development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

- (m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewer areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$700.00 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 \$140,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Stormwater Disposal**

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

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

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

development.

7. **Compliance with Standards**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. **Survey Certificate**

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

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

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

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

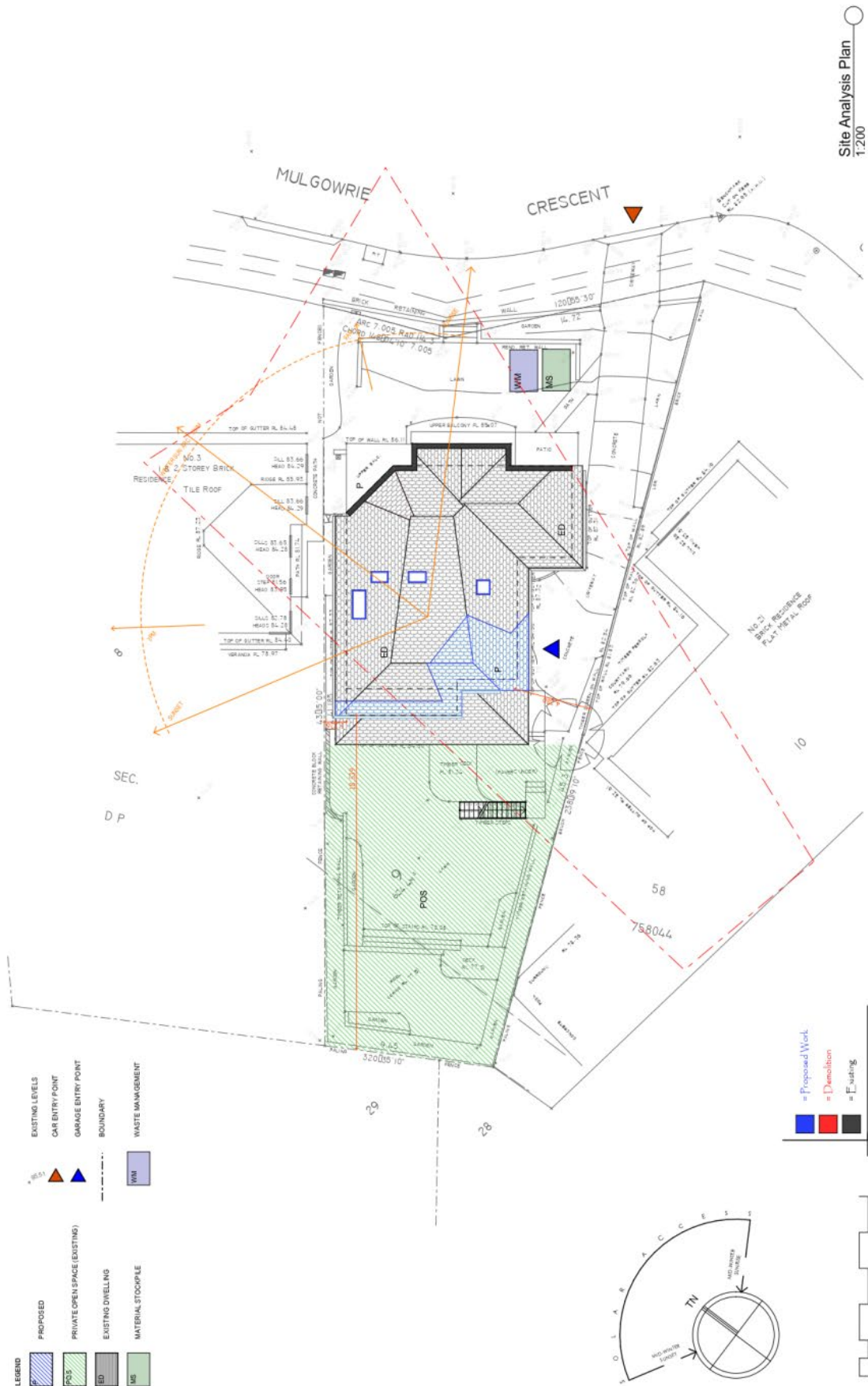
Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

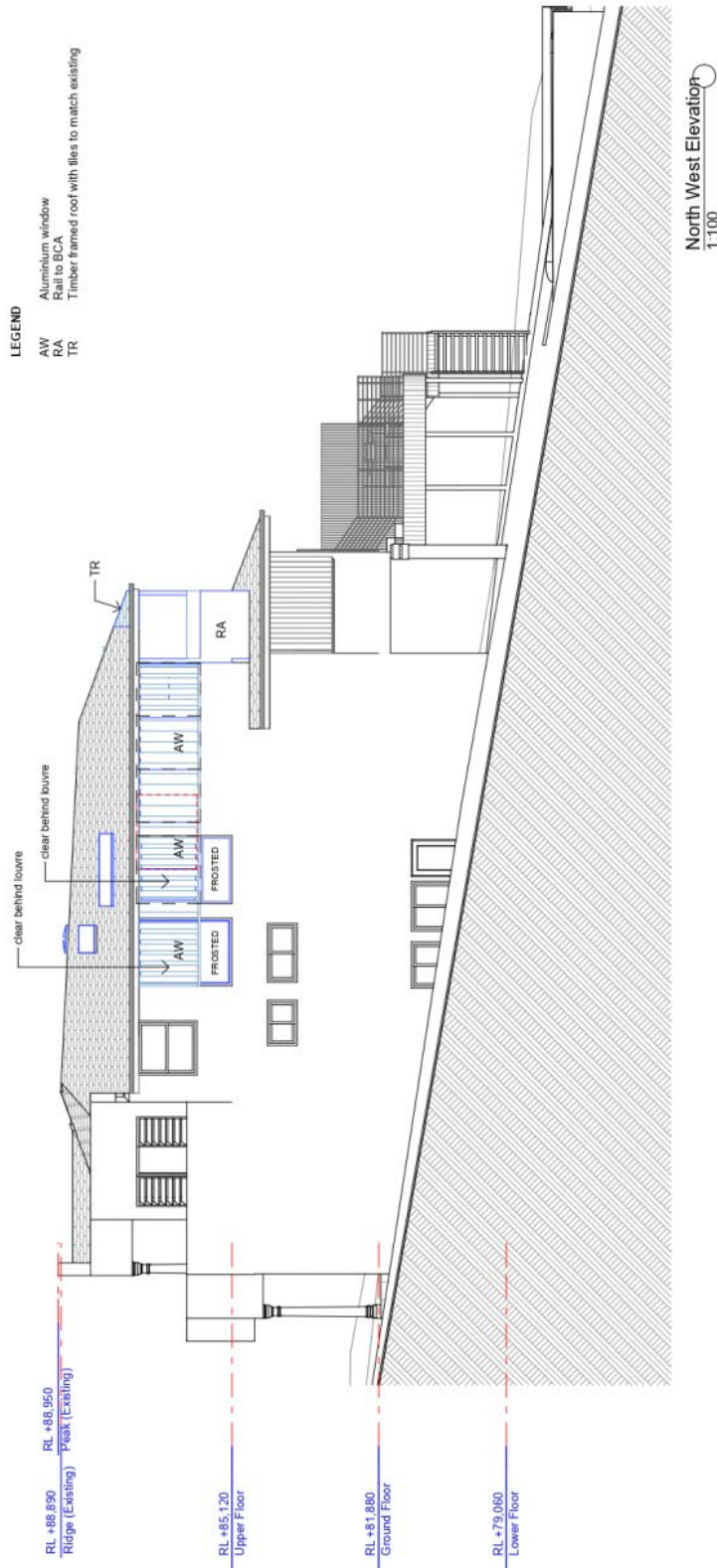
**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

9. **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.

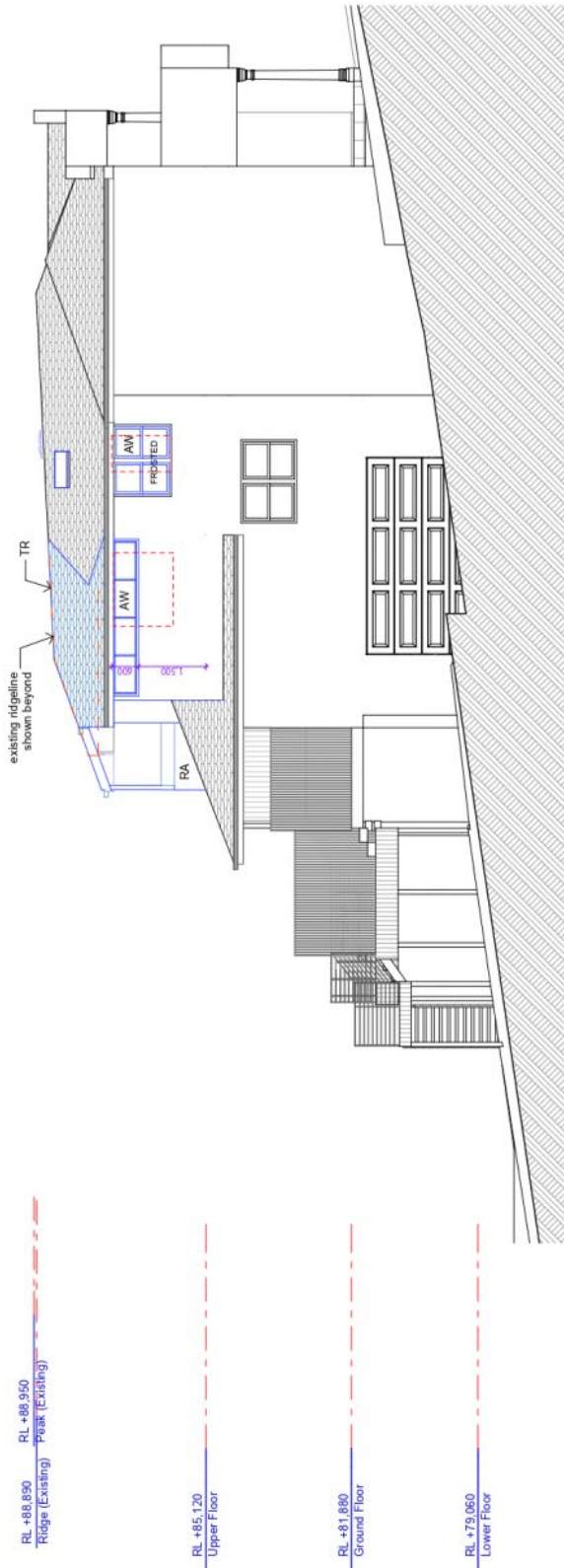




DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE. The builder shall check and verify all dimensions Drawings are for information only and are not to be used for construction purposes until issued by the Architect for construction.		<div>sketchArc</div> <div>Po Box 377 Manly 1655 m : 0422 521 871 e : power@sketcharc.com.au w : www.sketcharc.com.au</div>		PROJECT 1 Mulgowrie Cr, Balgowlah, 2093, NSW Alterations & Additions Lot 9 Section 58 in DP 758044 - 624.4m2		<div>sketchArc</div> <div>Po Box 377 Manly 1655 m : 0422 521 871 e : power@sketcharc.com.au w : www.sketcharc.com.au</div>		CLIENT Private		<div>PROJECT 1 Mulgowrie Cr, Balgowlah, 2093, NSW Alterations & Additions Lot 9 Section 58 in DP 758044 - 624.4m2</div>		<div>DATE: 29/01/20 STAGE: DA DRAWN/DESIGNED: MP PROJECT NUMBER: 1430 ISSUE:</div>		<div>DATE: 29/01/20 STAGE: DA DRAWN/DESIGNED: MP PROJECT NUMBER: 1430 ISSUE:</div>	
REV	DATE	DESCRIPTION	<div><div>Project Name</div><div>Project Number</div><div>Issue</div><div>Scale</div><div>Drawn/Designed</div><div>Project Number</div><div>Issue</div></div>												

LEGEND

- AW Aluminium window
- RA Rail to BCA
- TR Timber framed roof with tiles to match existing



South East Elevation
1:100

		DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE.		
		The builder shall check and verify all dimensions. Drawings are not to be used for construction purposes until issued by the Architect for construction.		
REV	DATE	DESCRIPTION		
PROJECT: 1 Mulgowie Cr, Balgowlah, 2093, NSW Alterations & Additions Lot 9 Section 58 in DP 758044 - 624.4m ² CLIENT: Private				
sketchArc Po Box 377 Manly 1655 m : 0422 521 871 e : power@sketcharc.com.au w : www.sketcharc.com.au		SYM: DA DATE: 29/01/20 SCALE: 1:100@A3 PROJECT NUMBER: 1430 DRAWING NUMBER: MP ISSUE: DA9		

RL +88.890
Ridge (Existing)

RL +88.950
Peak (Existing)

RL +85.120
Upper Floor

RL +81.880
Ground Floor

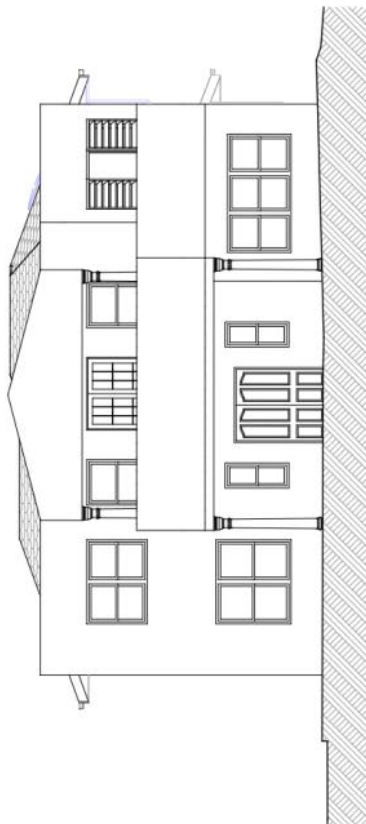
RL +88.890
Ridge (Existing)

RL +88.950
Peak (Existing)

RL +85.120
Upper Floor

RL +81.880
Ground Floor

RL +79.060
Lower Floor



North East Elevation
1:100

- LEGEND**
- AW Aluminium window
 - RA Rail to BCA
 - TR Timber framed roof with tiles to match existing



South West Elevation
1:100

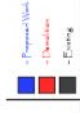
REV	DATE	DESCRIPTION

sketchArc
P o B o x 377 M a n l y 1655
m : 0422 521 871
e : power@sketcharc.com.au
w : www.sketcharc.com.au

PROJECT 1 Mulgowrie Cr, Balgowlah,
2093, NSW
Alterations & Additions
Lot 9 Section 58 in DP 758044 - 624.4m²

CLIENT Private

STATUS DA	SCALE 1:100@A3	PROJECT NUMBER 1430
DATE 29/01/20	STAGE DA	ISSUE
DRAWN/DESIGNED MP	DRAWING NO DA10	



ITEM 3.4	DA2019/1069 - 205 RIVERVIEW ROAD, AVALON BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/285895
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/1069 for alterations and additions to a dwelling house including a swimming pool on land at Lot 4 DP 18667, 205 Riverview Road, Avalon Beach, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1069
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 4 DP 18667, 205 Riverview Road AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Kristen Rooney
Applicant:	Kristen Rooney
Application Lodged:	26/09/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/10/2019 to 06/11/2019
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,186,800.00

The application seeks the determination for the alterations and additions to a dwelling house, and a new swimming pool at 205 Riverview Road Avalon.

The application seeks the approval for a forth (4) storey addition to be located behind the modernised carport area, as well as reconfiguration and additions to the existing three (3) storeys of the dwelling house. The application also includes a new swimming pool, decking and associated landscaping at the rear of the site. There is no works proposed for the rear area of the site that adjoins the Pittwater waterway.

The proposal includes a minor building height variation of up to 9.1m, of which the applicant seeks to rely upon a variation prescribed by 4.3(2D) of the Pittwater Local Environment Plan 2014, which provides that the height of buildings may reach up to 10m in height, subject to consistency with the

certain criteria.

The proposed building height was determined to be consistent with the criteria of clause 4.3(2D) of PLEP 2014, with the non-compliant areas providing a satisfactory residential amenity, character and design.

The proposal includes further non-compliance with the Pittwater 21 Development Control Plans. However, it was assessed that the non-compliances are acceptable, and that the proposal provides a bulk and scale that is consistent with the E4 Environmental Living zone, the character of the area, and the Riverview Road streetscape.

A view loss assessment was undertaken with the finding that the proposal constitutes view sharing, with the view loss being determined as minor in accordance with the four planning principals outlined within the Land and Environment Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004)* NSWLEC 140.

The notification of the review application resulted in five (5) submissions each 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 upon the privacy levels, however conditions have been applied to address these concerns.

Accordingly, the application is referred to the DDP with a recommendation for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development involves alterations and additions to the existing dwelling house and detached carport with the inclusion of a swimming pool and associated decking areas.

The proposal includes the following works:

First Floor (RL 30.48 - 31.33)

- Addition of a pedestrian entry from Riverview street level;
- New double carport;
- Addition of a new master bedroom and ensuite;
- Addition of a new study area; and
- Addition of a new internal lift.

Ground Floor (RL 27.410 - 28.260)

- Conversion of existing floor area involving:
 - Reconfiguration of rooms:
 - Inclusion of open-plan living, dinning, kitchen, laundry and cellar.
- Addition of a lounge and bathroom at the east side of the dwelling, connecting to the laundry and cellar:
- Addition of an internal lift:
- Addition of a new deck area, at the western side of the dwelling.

Lower Ground Floor (RL24.35)

- Conversion of existing floor area involving:
 - Reconfiguration of rooms;
 - Inclusion of a lounge, rumpus/guest bedroom, and bathroom.
- Addition of two new bedrooms,
- Addition of an internal lift; and
- Addition of new internal access stairs.

Pool Level (RL 20.5 - 21.9)

- Addition of a new outdoor room;
- Addition of a new bathroom and WC;
- Addition of new internal access stairs;
- Addition of a new swimming pool and spa; and
- Addition of new deck areas.

External

- New access stairs within the southern side boundary from the first floor carport to the ground floor;
- New courtyard on the ground floor servicing the living and lounge areas;
- New deck area adjoining the swimming pool/spa;
- New access stairs within the northern side boundary to access the rear of the site; and
- Associated landscaping throughout the site.

As a result of initial view loss inspections, amended plans were requested to address the planning concerns regarding the view loss created by non-compliant building height and privacy concerns due to overlooking. As a result, amended plans were received that redesigned the upper roof below the 8.5m building height requirement, moved the Pool Level external stairs/deck area from the northern side boundary by 0.3m, and amended the north-facing door to the Outdoor Room on the Pool Level to address privacy. The assessment report is undertaken with these 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

Pittwater Local Environmental Plan 2014 - Zone E4 Environmental Living
 Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
 Pittwater Local Environmental Plan 2014 - 5.7 Development below mean high water mark
 Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
 Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
 Pittwater 21 Development Control Plan - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
 Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - C1.4 Solar Access
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run
 Pittwater 21 Development Control Plan - D1.1 Character as viewed from a public place
 Pittwater 21 Development Control Plan - D1.8 Front building line
 Pittwater 21 Development Control Plan - D1.9 Side and rear building line
 Pittwater 21 Development Control Plan - D1.11 Building envelope
 Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 4 DP 18667 , 205 Riverview Road AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site is identified as Lot 4, DP 18667 and is known as 205 Riverview Road, Avalon.</p> <p>The subject site is a single residential allotment located on the western side of Riverview Road, Avalon. The property is located within land zoned for E4 Environmental Living pursuant to the Pittwater Local Environmental Plan 2014. The site is also located within the Coastal Zone and is subject to estuarine and geotechnical hazards.</p> <p>The site is regular in shape and has a total area of 762.4m². The property has a street frontage of 15.3m and depths of 51.8m to the north and 50.3m to the south, measured from the front boundary to the Mean High Water Mark (M.H.W.M). The site fronts onto the Pittwater Waterway.</p> <p>The site has a steep fall, approximately 30m, from the street down to Pittwater waterway.</p> <p>The site has numerous trees throughout that were established prior to the construction of the dwelling house, or have been planted and established since its construction.</p>

At present, the site accommodates a detached double carport on the front boundary, a three (3) storey dwelling house, a boatshed, jetty/pontoon and inclinator to the lower ground floor.

Surrounding developments consist of other similar detached dwelling houses, of varying ages, within a landscaped and bushland setting.

Map:



SITE HISTORY

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

- Development Application **N0334/15** for the alterations and additions to existing dwelling and carport was approved by Council on the 28 July 2016.
- Development Application **N0389/14** for the alterations to the dwelling involving excavation below basement floor level, internal reconfiguration of existing dwelling, modify the roof form and minor aesthetic works to the carport, including new metal roof sheeting to match dwelling, was refused by Council on the 2 April 2015.
- Development Application **N0010/07** for the construction of a new seawall, boatshed, skid, and inclined passenger lift was approved by Council on the 10 October 2007.
- Development Application **N0128/06** for a seawall, boatshed, skid and inclined passenger lift was withdrawn from Council.
- Development Application **N0884/04** for a new jetty and pontoon was approved by Council on the 07 March 2005.
- Development Application **N1155/01** for the alterations and additions including a carport was approved by Council on the 14 March 2002.
- Development Application **N0998/01** for the alterations and additions to the existing dwelling, including a new carport was refused by Council on the 6 December 2001.

Pre-lodgement Meeting **PLM2019/0037** was held on the 19 March 2019 for the alterations and

additions to the existing dwelling house. The notes concluded that greater consistency with the Pittwater Local Environment Plan 2014, and the Pittwater 21 Development Control Plan controls was required, particularly in regards to the maximum building height and bulk and scale of the proposal.

It was recommended that a redesign of the garage, entryway and first floor level be undertaken to minimise the extent of the building height breach, and reduce the bulk and scale in order to maximise opportunities for view sharing for the surrounding properties. Councils Biodiversity, Landscaping and Waterway and Riparian officers also provided recommendations in regards to addressing specific Pittwater Development Control Plan clauses in order for the application to be considered satisfactory.

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&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to building height, side setbacks, privacy and view loss.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has</p>

Section 4.15 Matters for Consideration'	Comments
	<p>been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.\</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment

Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Peter Francis Van Der Kraan	188 Riverview Road AVALON BEACH NSW 2107
Ms Dinusha Peiris Mr Shane Peter Oliver	203 Riverview Road AVALON BEACH NSW 2107
Mr Maurice Peter Drenth	192 Riverview Road AVALON BEACH NSW 2107
Ms Kathleen Helen Kohn	184 Riverview Road AVALON BEACH NSW 2107
Vaughan Milligan Development Consulting Pty Ltd Mr John Morton Smythe	207 Riverview Road AVALON BEACH NSW 2107

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

- **Type of Development**
- **Building Height**
- **Side Setback**
- **Side Boundary Envelope**
- **Privacy Privacy**
- **Views**
- **Overshadowing**
- **Bulk and Scale**
- **Landscaping**
- **Construction methodology/Dilapidation Reports**
- **Property Value**

The matters raised within the submissions are addressed as follows:

- ***Concern was raised with the type of application.***

Comment:

The application was submitted as "Alterations and Additions to an existing dwelling house". Whilst the submitted plans show increases in floor space (new upper floor), and changes to the external fabric of the existing dwelling, the proposed design does not represent a complete transformation of the existing 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 Principals, Council agrees that the application is for alterations and additions existing dwelling, as opposed to an new dwelling.

This issues does not warrant refusal of the application.

- ***Concern was raised in regards to the building height of the proposal.***

Comment:

With respect to the permitted 8.5m building height referred to in the submission, the applicant seeks to rely upon a variation prescribed by 4.3(2D) of PLEP 2014, which provides that the height of buildings may reach up to 10m in height, subject to consistency with certain criteria. The assessment of the criteria has also been considered elsewhere in this report (see Clause 4.3 - 'Height of Buildings').

In the consideration of the variation prescribed by 4.3(2D) of PLEP 2014 it was found that the development achieved consistency with the objectives of the clause and E4 Environmental Living zone, as well as demonstrating that variation was minor. As a result, there were sufficient environmental planning grounds to justify the variation and support the non-compliance.

This issues does not warrant refusal or further amendment of the application.

- ***Concern was raised with the continuation of the non-compliant side setbacks demonstrated by the existing dwelling.***

Comment:

This issue has been addressed in detail in this report (refer to Clause D1.9 - Side and Rear Building Line under the P21 DCP).

The proposed new first floor complies with the required setbacks of the P21 DCP.

In summary, the areas that mimicked the existing non-compliance (as conditioned) was found to satisfy the various objectives of the control and had minimal impact upon the provision of deep soil landscaping, visual dominance, bulk and scale and the amenity of neighbouring property (including view sharing, privacy and overshadowing) such that the non-compliance did not warrant the refusal of the application.

- ***Concern is raised that the proposed side boundary envelopes will be visually dominant, result in overshadowing and the amenity impacts on the neighbouring sites and the Riverview Road streetscape.***

Comment:

This issue has been addressed in detail in this report (refer to Clause 1.11 - Building Envelope under the P21 DCP). It is considered that the development has been sufficiently articulated to visually define the dwelling within the shape and topographical context of the site achieving an architectural consistency with the detached dwellings which collectively characterise the local area. It was also 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.

As such the non-compliance did not warrant the refusal of the application.

- ***Concern is raised in the submission from No. 203 and No. 207 Riverview Road that the development will result in a significant loss of privacy to the private open space areas, particularly with respect to the proposed windows and terraces on all four levels.***

Comment:

This issue has been addressed in detail elsewhere in this report (refer to Clause C.1 - Visual Privacy under the P21 DCP).

In summary, the assessment found that the the development has been generally designed to satisfactorily address overlooking. However, areas which have been identified as creating unreasonable overlooking have been appropriately addressed by conditions which require the installation of privacy screens to certain windows and terraces on all four (4) levels.

The proposed access stairs within the southern side boundary from the carport to the Ground Floor level, are considered a transitional zone for access, and it is not anticipated that there would be unreasonable impacts of overlooking from this area.

This issue does not warrant the refusal of the application.

- ***Concern is raised that the development will adversely impact upon views from surrounding properties and the Streetview.***

Comment:

This issue has been addressed in detail elsewhere in this report (refer to Clause C1.3 - View Sharing under the P21 DCP).

In summary, the assessment found that the extent of view loss was minor No. 188, No. 184 and No. 192 Riverview Road and that the extent of view loss was not sufficient grounds to refuse the application.

- ***Concern is raised in the submission from No.203 Riverview Road that the development will create unreasonably overshadowing on the north side of the property, particularly during the mid-winter months.***

Comment:

This issue has been addressed in detail in this report (refer to Clause C1.4 - Solar Access under the P21 DCP).

In summary, the assessment found that the development satisfies the requirements of the control and did not warrant the refusal of the application.

- ***Concern is raised in the submissions that the development, by virtue of the number of storeys (4), and the non-compliance with the DCP requirements has the appearance of a large dwelling house that does not relate to the streetscape or overall character of the local area.***

Comment:

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 that it no longer is consistent with the character of the area.

The development includes an additional fourth floor and refurbishment to the existing carport structure. The forth floor is located behind the modernised carport design that thereby relieves the bulk and scale of the additional floor area with sufficient articulation and improved street presence.

The development also involves replacing the pitched roof with a flatter roof form which improves visual outlook from surrounding properties.

The upgrading of the detached dwelling is consistent with the scale, design and character of

the local area and does not warrant refusal of the application.

- **Concern is raised in the submission from No. 203 Riverview Road that the provision of landscaped open space is below that required under D1.14 Landscaping Area - Environmentally Sensitive Land, and further built form within the side setbacks removes existing landscaped areas.**

Comments:

This issue is discussed above (see 'Site Coverage') and in detail under Clause D1.14 - 'Landscaping Area - Environmentally Sensitive Land' in this report where it was found that the proposal satisfied the objectives of the clause and the variation could be supported. However, it is agreed that the location of the northern Pool Level deck area removes additional areas of landscaping that can screen and soften the built form, and also provide additional privacy. Therefore, the decking has been conditioned to maintain a larger side setback to the northern boundary so to allow areas of landscaping to be retained and provided to mitigate privacy impacts.

This issues does not warrant refusal of the application.

- **Dilapidation reports have been requested by the neighbouring sites.**

Comments:

The development proposes excavation within close proximity to the southern and northern boundary.

It is considered a dilapidation report is appropriate to ensure security against possible damage to private property. The dilapidation report has been included within the conditions of consent.

It is considered that this issue does warrant the refusal or amendment of the application.

- **Concern is raised that the development will reduce property value as a result of view loss.**

Comment:

This issue of property value is not a planning matter which can be addressed under the provisions of s.97C of the EP&A Act.

This issue does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>General Comments</p> <p>There is no objection to a gas fireplace and no conditions.</p> <p>However, the proposal is not supported if the fireplace is a solid fuel heater due to insufficient information.</p> <p>If the application is for a solid fuel heater, there is no details in regards to the make and model of the heater and any installation details that will determine if the appropriate Australian Standards will be met.</p>

Internal Referral Body	Comments
	<p>For the installation of a Solid fuel heater the following information is required or Section 68 Local Government Act application:</p> <ol style="list-style-type: none"> 1. Provide evidence that the flue pipe will extend not less than 4.6m above the top of the floor protector. 2. If the flue is 3m or less in horizontal distance from the highest point of the roof, is the top of the flue at least 600mm above the highest point of the roof? 3. If the flue is over 3m metres in horizontal distance from the highest point of the roof, is the height of the flue at least 1000mm above the roof penetration? 4. Provide council evidence that the topography of the site or likely weather patterns or configuration of nearby dwelling/s indicate a potential to cause a smoke nuisance? (Include on site plan) 5. Provide evidence that there are not any significant trees or other environmental or structural factors in the immediate vicinity that may cause a smoke down draught? (Include on site plan) 6. The application must contain site, floor and elevation plans drawn to a scale of 1:100 or 1:200 clearly demonstrating the location of the proposed heater and the proposed flue in relation to the roof line of the dwelling and the closest neighbouring dwelling/building. 7. Provide detailed evidence to Council that the application contains specifications of the appliance to be installed indicating compliance with AS/NZS 2918:2001 and the Building Code of Australia? 8. provide evidence that the proposed heater will meet the emission control requirements of AS 4013.1999/AS 4013.2014? 9. provide evidence that the installation will meet the requirements of AS/NZS 2918.2001 <p>Planners Comment Inquires with the applicant confirmed that the fireplace is to be a gas fireplace, not a solid fuel fireplace.</p> <p>Therefore, there are no concerns or further conditions for the proposed gas fireplace servicing the Ground Floor Lounge Room.</p>
Landscape Officer	<p>The Arborist's Report and Landscape Plans submitted with the application are noted.</p> <p>The Arborist's Report indicates that all trees can be retained subject to specific tree protection measures.</p> <p>Recommended conditions have been provided addressing tree protection, including requirement for a Project Arborist to oversee works adjacent to trees.</p> <p>A number of rock outcrops are located across the site below the existing building and are a feature of the site. The plans indicate that these can be retained, with additional condition provided requiring protection and retention of rock outcrops.</p>

Internal Referral Body	Comments
	In view of the above, no objections are raised to approval subject to conditions as recommended.
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment - Biodiversity section raises no objections to the proposed development, subject to conditions.</p> <p>This application was assessed against Pittwater LEP Clause 7.6 Biodiversity and Pittwater DCP B4.7 Pittwater Spotted Gum EEC.</p> <p>The proposal is for the alterations and additions to the existing dwelling, including demolition and construction of new structures including a swimming pool and landscaping.</p> <p>The submitted Arboricultural Impact Assessment report (NSW Tree Services, 12/09/2019) assesses 9 trees, 8 of which are canopy species from PSG EEC. The report indicates that all trees can be retained using tree sensitive construction measures and specific tree protection measures. The Landscape Plan complies with biodiversity controls.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p><u>Comment:</u></p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Mark Hurcum Design Practice Architects dated September 2019 and Council accepts the assessment, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p>

Internal Referral Body	Comments
	<p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>Estuarine Risk Management</p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.66m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.07m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m.</p> <p>On internal assessment, the ground floor level for the proposed additions and alterations is at 20.5 m AHD or above and is much higher than the applicable EPL of 2.66m AHD for the site.</p> <p>The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP.</p>
NECC (Development Engineering)	<p>The proposed development does not require OSD. The existing driveway crossing is to be reconstructed which has been conditioned. The submitted Geotechnical report addresses the relevant DCP controls. No objection to approval, subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed under Pittwater 21 DCP B5.8 Water Quality Pittwater 21 DCP B8.2 Erosion and Sediment Control SEPP Coastal Management 2018 - Coastal Environment Zone</p> <p>As the application does not increase impervious area by more than 50sqm, the owner is not expected to meet water quality controls. Given the sensitivity of the coastal environment on this lot, the owner is however encouraged to install a sediment arrestor/control pit on their stormwater drainage prior to stormwater being discharged from the property and into Pittwater. The pit would need to be cleaned out every year or two to remove built up sediment and organic matter.</p> <p>Sediment and erosion controls must be installed prior to disturbing</p>

Internal Referral Body	Comments
	any soil on the site and maintained until work is complete and groundcover re-established.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	The Aboriginal Heritage Office provided a response on the 25 November 2019, that there are no concerns in regards to the proposal subject to conditions.

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. A357306_02 dated 26 September 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A357306_02 dated 26 September 2019).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The 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?	Yes

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m - 10m	2.6m - 8.8m	Yes

*The proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3(2) of PLEP 2014. However, The applicant seeks to rely upon a variation prescribed by 4.3 (2D) of PLEP 2014, which provides that the building may reach up to 10m in height, subject to consistency with certain criteria. The objectives of the height of buildings development standard, and relevant criteria are assessed within the 4.3 Height of buildings section of the report.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone E4 Environmental Living

The proposed alterations and additions are consistent with the objectives of the E4 Environmental Living zone. The development will continue to have the appearance of a "low impact" residential dwelling house in a natural landscaped setting, integrated with the scenic landform and aesthetic values. The new upper First Floor and carport area modernises and contributes to the Riverview Road streetscape and reflect the predominant character of residential development in the immediate Riverview Road area.

Overall, the proposal is consistent with the desired objectives and future character of the E4 Environmental Living zone.

4.3 Height of buildings

The proposed development is non-compliant with the 8.5m maximum building height prescribed by

clause 4.3(2) of PLEP 2014, as follows:

- Maximum overall height of the roof line of the roofline of the Ground Floor 8.8m - 8.0m; and
- Maximum overall height of the additional balcony area (including the balustrade) of the Ground Floor is 6.9m - 9.1m.

The building height non-compliance is demonstrated in figures 1 and 2 below.

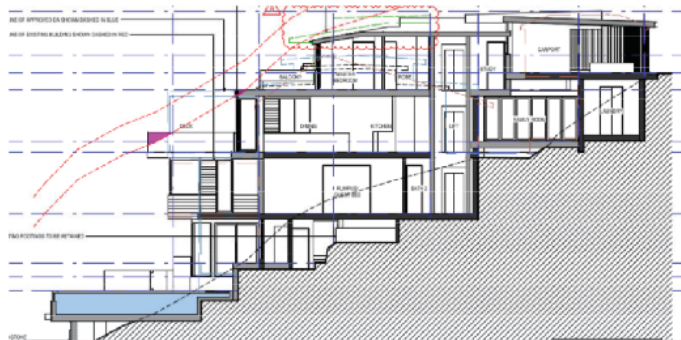


Figure 1: Building height non-compliance shown in pink.

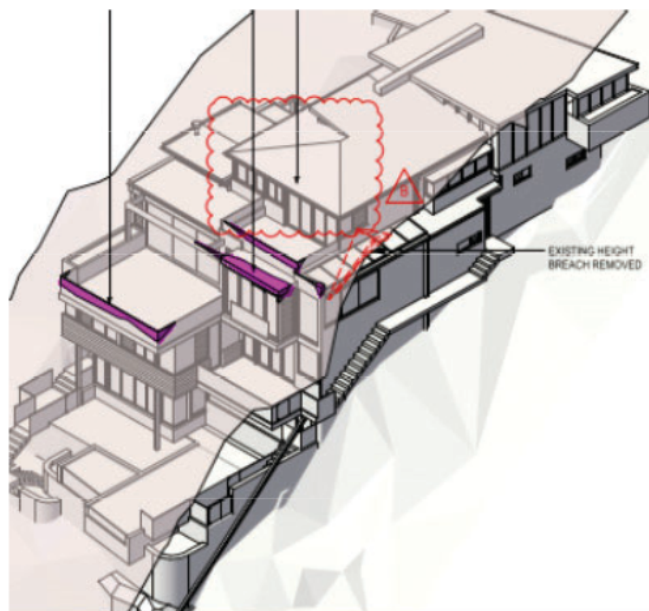


Figure 2: Building height non-compliance shown in pink.

The maximum overall height of the new carport is compliant at 2.5m - 7m, and the maximum overall height of the new First Floor is compliant at 6.2m to 8.3m.

The applicant seeks to rely upon a variation prescribed by 4.3(2D) of PLEP 2014, which provides that the height of buildings may reach up to 10m in height, subject to consistency with certain criteria.

One of the relevant criteria is to ensure that the objectives of the clause are achieved. The

objectives of the height of buildings development standard are considered as follows:

- ***To ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality.***

Comment:

The proposal reflects the established built form character of the immediate Riverview Road area where multi-level, variably stepped dwelling houses are prevalent, due to the steep topography of the land and difficulty with pedestrian and vehicular access. The proposed works have been designed to accommodate the steep slope of the site, while providing the required gradients for safe entry and exit for vehicles to Riverview Road.

The proposal is for a four (4) level dwelling house, with the new addition of the fourth storey.

In this case, the existing three levels are to remain but reconfigured with internal changes, new access and balcony elements and a new roof form. It is the new roof form and the balcony additions that contributes to the noncompliance, not the fourth floor addition.

Although the design of the alterations is more contemporary and architecturally unique when compared to the more traditional style of surrounding dwelling houses and parking structures, the residential nature of the development and the non-compliance, is considered to be consistent with the objectives of the zone and the urban context of the local area.

The development satisfies this objective.

- ***To ensure that buildings are compatible with the height and scale of surrounding and nearby development.***

Comment:

The development is located on the downward slope of the Riverview Road escarpment which is characterised by undulating topography to the Pittwater water high water mark. This results in variable built forms along the road, such that there is an eclectic mix of height and scale in which to be compatible with.

Notwithstanding, the overall height of the development is below the 10m requirement, and is representative of a four (4) storey development when viewed from properties to the north and south and a one (1) storey development when viewed from the upslope of Riverview Road.

The non-compliance is located at the western edge of the roofline and along the new terrace areas (demonstrated in figure 1 and 2 above) due to the topographical nature of the site. The non-compliance is considered to be relatively minor and does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height non-compliance is considered to be compatible.

The development satisfies this objective.

- ***To minimise any overshadowing of neighbouring properties.***

Comment:

The western roof element and terrace balustrade (where the maximum height protrusions occur) do not contribute to any unreasonable overshadowing of adjoining properties.

The development satisfies this objective.

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

Comment:

It is acknowledged that the non-compliance along the western edge of the proposed roof does not impact the viewing angle from the properties to the north No.207 Riverview Road or south No.203 Riverview Road. The sweeping range of views available from the internal areas and balconies of both properties remain intact.

The height non-compliance does not have an unreasonable impact upon the existing views from further up the escarpment to Riverview Road due to the higher placement/vantage point of these properties. The views from these dwelling houses are likely to be improved and enhanced from some areas as a result of the reduction of the carport roofline that is less than what is currently on the site.

The development satisfies this objective.

- ***To encourage buildings that are designed to respond sensitively to the natural topography.***

Comment:

The proposal is reliant upon a minor volume of excavation under the footprint of the carport on the Ground Floor and under the footprint of the Lower Ground Floor for the proposed toilet and bathroom for the Pool Level as shown in figure 3. However, the visual impact of the minor excavation will be screened from view, and the proposal presents as a dwelling that has been sited to sympathetically follow the natural slope of the land.

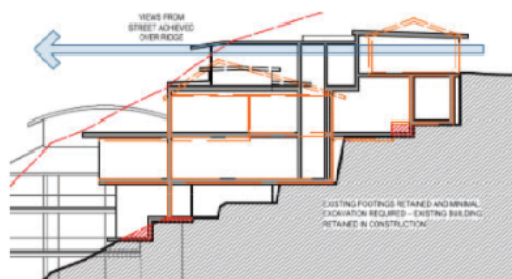


Figure 3. Extent of excavation shown red.

The proposals design with the open style rear balcony areas, provides a more "stepped" look when viewed from the rear and the neighbouring properties. The proposal reflects the established built form character of the immediate Riverview Road area where multi-level, variably stepped houses are prevalent, due to the steep topography of the land and difficulty with pedestrian and vehicular access.

The development satisfies this objective.

- ***To minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.***

Comment:

Despite the topographical constraints of the site, the developments design creates additional

articulation, and visual interest and the additional floor is sufficiently setback from the boundaries such that the visual impact of the building will be appropriately managed.

Existing landscaping has been retained wherever possible and will soften and filter the built form. Therefore, the proposal will be sufficiently integrated into the existing landscaped setting.

The development satisfies this objective.

The remainder of the criteria prescribed by clause 4.3(2D) of PLEP 2014 have been considered, as follows:

- ***The consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor.***

Comment:

The portions of the development that exceed the 8.5m building height plane are limited in height and depth, as demonstrated in figure 1 and 2 above. The protrusions are reasonably described as minor.

The development satisfies this objective.

- ***The building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%).***

Comment:

The proposed new carport is sited on a slope of approximately 23 degrees.

The development satisfies this objective.

- ***The buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.***

Comment:

The proposal is reliant upon a minor volume of excavation. However, the extent of excavation proposed is not unreasonable in the context of the site, and does not present as excessive built form as seen from the public domain.

The development satisfies this objective.

The proposed development will be consistent with the criteria of clause 4.3(2D) of PLEP 2014, and the application of the 10m variation is supported. As such, the proposed development is consistent with the maximum building height prescribed for the site.

5.7 Development below mean high water mark

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

7.1 Acid sulfate soils

The site is identified as being partly within 'Class 1' and partly within 'Class 5' on the Acid Sulfate

Soils Map.

The proposed development involves minor earthworks in relation to the construction of the proposed swimming pool and dwelling. Due to the sloping nature of the site, there is minimal excavation as part of the proposal. The proposed earthworks do not involve the disturbance of more than one tonne of soil, which is the trigger for an Asset Sulfate Soil Management Plan (ASSMP). As a result, a ASSMP is not required.

In addition, the water table will also not be affected by the proposed works.

7.2 Earthworks

A Geotechnical Assessment has been prepared by J K Geotechnics, Reference No. 27796Rrpt2, dated 11 September 2019. This report and its recommendations are included within the applied conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposals required excavation.

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

7.6 Biodiversity protection

A landscaping design statement from Landforms with associated Landscape Plans dated 18 September 2019, have been submitted with the application as well as an Aborisit Report from NSW Tree Services, dated 12 September 2019. As a result, Councils Landscaping and Biodiversity officers have assessed the proposal and consider the impact of the development on the existing biodiversity to be reasonable, subject to the imposed conditions.

7.7 Geotechnical hazards

A Geotechnical Assessment has been prepared by J K Geotechnics, Reference No. 27796Rrpt2, dated 11 September 2019. This report and its recommendations are included within the applied conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposal on sloping land.

7.8 Limited development on foreshore area

This development application does not propose any changes to the foreshore area of the site.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	<u>First Floor</u>	up to 96%	No
		0.2m - 0.5m Carport	up to 6%	No
		6.1m - 8m First Floor	up to 78%	No
		<u>Ground Floor</u>		
		1.4m - 2.2m Ground Floor Retaining Wall	-	Yes
		7.7m - 8.3m Ground Floor Dwelling House (Living Room)	- up to 49%	Yes No

		3.3m - 4.6m Ground Floor Dwelling House (Lounge) <u>Lower Ground Floor</u> 7.1m - 9.9m Lower Ground Floor Dwelling House 10.7m - 13.8m Pool Level Dwelling House (Existing)	- -	Yes Yes
Side building line	2.5m North	<u>First Floor</u> 5m Entry 5.1m - 7.3m Dwelling House 7.1m Carport	- - -	Yes Yes Yes
		<u>Ground Floor</u> 1.1m Planter (balcony) 1.2m - 7.2m Dwelling House	- up to 52%	Yes No
		<u>Lower Ground Floor</u> 1.2m Dwelling	52%	No
		<u>Pool Level</u> 2.1m Dwelling House 0.3m Deck 1.3m Access Stairs	16% 88% 48%	No No No
	1m South	<u>First Floor</u> 0.0m Planter 0.5m Access Stairs 2m - 2.5m Dwelling House	100% 50% -	No No Yes
		<u>Ground Floor</u> 1.5m - 2.6m Dwelling House	-	Yes
		<u>Lower Ground Floor</u> 1.1m Deck (existing)	-	Yes
		<u>Pool Level</u> 1.1m Pool Area 3.1m Swimming Pool	- -	Yes Yes
Building envelope	3.5m North	Encroachment of up to 3.3m in height for a length of 5.5m, and encroachment of 1.6m in height for a length of 4.4m	up to 94% & up to 45%	No
	3.5m South	Encroachment of up to 2.3m in height for a length of 12.3m, and height of 3.3m for a length of 2m	up to 65.7% & up to 94%	No
Landscaped area	60%	58% (440.6sqm)	3.3%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach 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
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	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
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
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	Yes
C1.4 Solar Access	No	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

The development is consistent with the Desired Character statement of the Avalon Beach Locality with exception of the third and fourth storey element of the dwelling.

Specifically, the locality statement provides that the *"locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape"*.

The addition First Floor Level and Pool Level and the alterations to the dwelling house are proposed with no significant site excavation.

In this regard, the built form will continue to sit comfortably with adjoining and surrounding two, three and four storey residential development. The built form is located downslope in steep topography, with the fourth storey element siting behind the carport, presenting as one storey to the Riverview Road. Proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape.

On balance, the proposal is considered consistent with the desired future character of the Avalon Beach locality.

B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

The property contains a modified landscape typical of a suburban garden with several upper canopy trees of which the species are typical of the Pittwater Spotted Gum Forest.

Councils Biodiversity Officer states:

"The submitted Arboricultural Impact Assessment report (NSW Tree Services, 12/09/2019) assesses 9 trees, 8 of which are canopy species from PSG EEC. The report indicates that all trees can be retained using tree sensitive construction measures and specific tree protection measures. The Landscape Plan complies with biodiversity controls."

As a result, the proposal there are no further natural environment issues with conditions to ensure appropriate tree protection is undertaken.

C1.3 View Sharing

Merit consideration

Three submissions were received from the following properties which included concerns regarding view loss:

- 194 Riverview Road
- 188 Riverview Road
- 184 Riverview Road

The figure below shows the origin of the submissions relative to the subject site, and the view angles of the sites over the subject site (outlined in red).

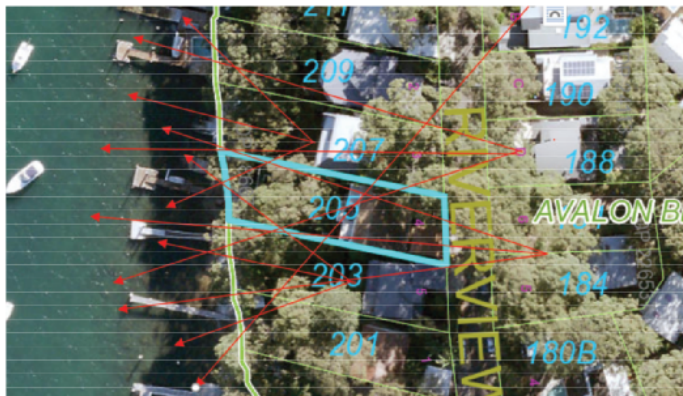


Figure 4: View angles over the subject site.

Following an initial site inspection of 188 Riverview Road 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 (red dots).

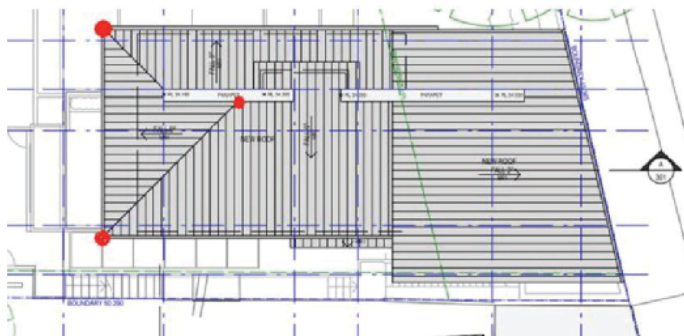


Figure 5: Location of Height Poles on the subject site.

The height poles were erected and inspections of the submitters properties occurred. As a result of the inspections, amended plans were received that amended the design of the roof. The roof parapet was deleted, and the roof has been pulled back and compressed so it is below the 8.5m building height plane.

Therefore, the view loss is undertaken with the amended design.

Note: The poles exiting onsite continue to display the original design, not the amended design. However the overall height does not change.

Whilst no formal view loss submission was received from No. 203 or No. 205 Riverview Road, the impact to their existing view lines was assessed during site visits. It was determined that these sites did not have unreasonable view loss as a result of the proposal.

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

- *A reasonable sharing of views amongst dwellings.*

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:

No. 188 Riverview Road

No. 188 Riverview Road is situated up the Riverview Road escarpment and therefore experiences more limited views over the existing houses on the lower side of Riverview Road than the dwelling houses lower on the escarpment that adjoin the Pittwater waterway.

As can be seen in the photographs below, the main view is the Pittwater Water views, Ku-Ring-Gai Chase National Park (land and water interface) and district views towards Lovett and Morning Bay.

The view is obstructed by existing dwellings, vegetation and power infrastructure.

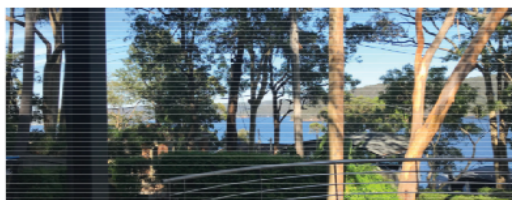


Photo 1: Existing views from No.188 Riverview Road to the south-west over the subject site.

No. 184 Riverview Road

No. 184 Riverview Road is situated up the Riverview Road escarpment and therefore experiences more limited direct views over the existing houses on the lower side of Riverview Road than the dwelling houses lower on the escarpment that adjoin the Pittwater

waterway.

As can be seen in the photographs below, the main view is the Pittwater Water views, Ku-Ring-Gai Chase National Park (land and water interface) and district views towards Lovett and Morning Bay.

The view is obstructed by existing dwellings, vegetation and power infrastructure.



Photos: Existing Views from No.184 River Road to the west over the subject site.

No. 192 Riverview Road

No. 192 Riverview Road is located north-east of the subject site, approximately 30m from the subject property. No. 192 Riverview Road is situated up the River Road escarpment and therefore experiences more limited views over the existing houses on the lower side of Riverview Road, and over the existing houses in Cabarita Road than the dwelling houses lower on the escarpment that adjoin the Pittwater waterway.

As can be seen in the photographs below, the main view to the south-east and east is the Pittwater Water views, Ku-Ring-Gai Chase National Park (land and water interface) and district views towards Lovett and Morning Bay. The views to the north, of Palm Beach headlands, Pittwater waterways, land and water interface and the headlands of the Central Coast.

The view is obstructed by existing dwellings, vegetation and power infrastructure.

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:

No.188 Riverview Road

Views are primarily obtained from the rooms orientated towards the front boundary on the ground floor and first floor of the dwelling house. The affected views are over the front boundary, in a south-west orientation. The views to the west and north-west remain unaffected by the proposal.

The oblique views are obtained from the ground floor front terrace area, the lounge/dinning room, kitchen and front entry area. The views from the first floor are obtained from a family room, study and bedroom. The views are partially obstructed from both a standing and

sitting position by existing dwellings, vegetation and power infrastructure.

It is important to note that the view line and the view impact as a result of the development changes as you move across the width and depth of the property.

No. 184 Riverview Road

Views are primarily obtained from the habitable rooms and outdoor areas orientated towards the front boundary. The affected views are over the front boundary, in a west orientation. The views to the south-west and north-west remain unaffected by the proposal.

The oblique views are obtained from the ground floor front balcony, the lounge/dinning room and kitchen. The views are partially obstructed from both a standing and sitting position by existing dwellings, vegetation and power infrastructure.

It is important to note that the view line and the view impact as a result of the development changes as you move across the width and depth of the property.

No. 192 Riverview Road

Views are primarily obtained from the habitable rooms and outdoor areas orientated towards the front and side boundary. The affected views are over the front boundary, in a south-west direction. The views to the west, north-west and north remain unaffected by the proposal.

The oblique views are obtained from the first floor front balcony, and a bedroom. The views are partially obstructed from both a standing and sitting position by existing dwellings, vegetation and power infrastructure.

It is important to note that the view line and the view impact as a result of the development changes as you move across the width and depth of the property.

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. 188 Riverview Road

The affected view is to the south-west and consists of a partial Pittwater water view while the remainder of views sweep uninterruptedly from the south-west, west and north-west. The affected view lines of the Pittwater water view are the same area from each room on the ground and first floor and the front terrace area. The Pittwater water views affected are obtained from both a standing and sitting position while the views are only partially limited from a sitting position in the front terrace and combined dining/living room on the ground floor, and the family, study and bedroom on the first floor. There is no view impact to the views towards Ku-Ring-Gai Chase National Park (land and water interface) and district views towards Lovett and Morning Bay.

The extent of impact is considered to be **minor**.

No. 184 Riverview Road

The affected view is mainly to the west and consists of a partial Pittwater water view while the remainder of views over the subject site sweep uninterruptedly from the south-west, west and north-west. The Pittwater water views affected are obtained from both a standing and sitting position while the views are only partially limited from a sitting position. There is no view impact to the views towards Ku-Ring-Gai Chase National Park (land and water interface) and district views towards Lovett and Morning Bay.

The extent of impact is considered to be **minor**.

No. 192 Riverview Road

The affected view is mainly to the south-west and consists of a partial Pittwater water view while the remainder of views over the subject site sweep uninterruptedly from the west, north-west and to the north. The Pittwater water views affected are obtained from both a standing and sitting position while the views are only partially limited from a sitting position. There is no view impact to the views towards Ku-Ring-Gai Chase National Park (land and water interface) and district views towards Lovett and Morning Bay.

The extent of impact is considered to be **minor**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:No. 188, No. 184 and No.192 Riverview Road

Of relevance to view sharing, the development area that impacts the main view lines complies with the building height standard of 8.5m. The development is predominantly lower than the prescribed height of the existing carport, therefore there is a small portion of water view that is gained via the proposal. However, it is acknowledged that the roof line extends further into the water view line with the increase of the built form towards the west.

The development been found to exhibit non-compliance with the Front Boundary Setback and the Side Boundary Envelopes built form controls. Both elements of non-compliance for the fourth (4) level (area causing the view loss) have been found to be acceptable, achieve consistency with the objectives of the control and have subsequently been supported.

With regards to the building envelope, the non-compliance along the side elevations and are due to the sloping topography, which form constraints to the final built form. The building envelope does not cause additional view impact to properties No.184 or No.192 Riverview Road due to the location of the breaches away from the view lines. However, there is a very minor portion of Pittwater water view loss to No. 188 Riverview Road as a result of the building envelope non-compliance. Due to the small portion of view loss, and the view loss being determined as minor,

it is considered reasonable in this instance.

In context to the elevated position of all three (3) dwellings to the subject property and the extensive range of available and retained views, the non-compliances were considered not to be unreasonable. It is concluded that the extent of the breaches of the planning controls is reasonable and a more compliant design would not vastly improve the outcome.

Therefore, the proposed First Floor addition is considered reasonable in the circumstances of this application in that the application does demonstrate a reasonable sharing of views.

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

Comment:

The design alters the existing dwelling by upgrading it to a more contemporary appearance.

The design does alter the roof profile such that it improves views and visual outlook from surrounding properties through lowering of the roof line from the existing carport roofline.

The dwelling will also better address the street through the provision of modern open style carport and by soft landscaping within the front setback area.

The development satisfies this objective.

- *Canopy trees take priority over views.*

Comment:

The development retains some canopy trees and proposes additional landscaping.

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 PLEP 2014 / P21DCP 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.

C1.4 Solar Access

Description of non-compliance

The property to the south at No. 203 Riverview Road is most affected by the proposed development in relation to solar access. The position of the two dwellings is such that No. 203 Riverview Road is already significantly constrained in this regard; it is set much further to the east meaning that at 9.00am and 12.00 midday it is completely overshadowed by No. 205 Riverview Road.

At No. 203 Riverview Road, the main private open space is located to the west area of the dwelling.

It is noted that the actual windows of No. 203 Riverview Road are not correctly demonstrated on the shadow diagrams. However, a full assessment has been undertaken of the two windows that currently receive sunlight.

The submitted shadow diagrams demonstrate that at No. 203 Riverview Road:

- The private open space area (upper deck area on Level 3 servicing the living room) currently receives sunlight between 9am and 3pm;
- The private open space area (roofed decking area on Level 2, servicing the kitchen/dinning/lounge) currently is overshadowed by the roof, however there is sunlight between 12 noon and 3pm;
- The private open space area (roofed decking area on Level 1, servicing the rumpus and study) currently is currently overshadowed with no direct sunlight; and
- The two northern windows (Level 2 servicing the kitchen and bedroom) will be impacted by the proposal, however the kitchen and bedroom window currently receive sunlight between 12 noon and 3pm.
- The rear areas do not currently receive a compliant amount of sunlight.

The proposed development results in:

- A minor increase to overshadowing to the private open space area of No. 203 Riverview Road at 12noon to 3pm (at 9am, the private open space area is overshadowed due to the topography);
- A increase to overshadowing of the kitchen window between 12 noon to 3pm, 100% overshadowing to the window at midday, and part overshadowing by 3pm;
- Full overshadowing of the bedroom window for the entire day.

This reduction in sunlight appears to be as a result of the the proposed upper floor level, which is compliant with building height, and side setback controls.

The subject site has a slope of approximately 55%, which is considered a steep and adverse slope. Where there is adverse slope or topography, reasonable solar access to main private open space and to windows to principal living areas will be assessed on a merit basis.

Subject to that merit assessment, consent may be granted where a proposal does not comply with the standard, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality and any relevant State Environmental Planning Policy.

The proposed development has been assessed below in relation to the relevant outcomes of this clause, as follows:

- ***Residential development is sited and designed to maximise solar access during mid-winter.***

Comment:

The proposed fourth level (First Floor) is closer to the south than the north, due to the existing built form on the site, and the design objective of the upper floor being located behind the carport to assist in screening the proposed built form from the streetscape.

However, the First Floor proposal is compliant with the building height standard and required side building lines, and the proposal includes sufficient landscaped open space on site. As such, the proposal is demonstrably of an acceptable footprint for the site.

The proposed development is acceptable in relation to the relevant built form controls within the P21 DCP, for the reasons detailed throughout this report. In this way, the proposed

development is reasonable in its context.

The proposed development, being located on an east-west orientated lot, is designed in order to provide reasonable solar access in consideration of the topography of the site and surrounding areas.

- ***A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.***

Comment:

The proposal provides a reasonable level of solar access to the subject site and surrounding sites, considering the site's slope and context.

The level of overshadowing resulting from the proposed development is a product of the steep topography of the site and the surrounding land. It is acknowledged that No. 203 Riverview Road is particularly vulnerable to overshadowing.

The bedroom window within No. 203 Riverview Road, is currently overshadowed for most of the day but benefits from a small section of sunlight around 12.00 midday, which would be lost as a result of the proposed upper floor. This window is a side-facing window set deep into the site, making it difficult to protect. As a bedroom window, it is considered less vital to maintain sunlight to this window given that this is a space used primarily at night. Daylight and natural ventilation will remain to this window. Therefore, strict adherence to the solar access requirements in this case would unreasonably restrict development of the subject site.

The proposed development demonstrates it is acceptable in relation to all built form controls, for the reasons detailed in this report. As such, given the reasonableness of the proposed dwelling, the overshadowing impact is considered reasonable.

- ***Reduce usage and/dependence for artificial lighting.***

Comment:

The subject site achieves adequate solar access in order to reduce its reliance upon artificial lighting. As above, the proposal provides a reasonable level of solar access to the subject site and surrounding sites, given the context of the area's topography and the vulnerability of the site's to the south.

Planning Principle consideration

The 'Access to sunlight' planning principle from the *Benevolent Society v Waverley Council [2010] NSWLEC 1082* has been considered below. Relevant parts of the planning principle include:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*
- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*
- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while*

reducing the impact on neighbours.

- *For a window, door or glass wall to be assessed as being in sunlight, regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself. Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.*
- *For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

Comment:

Given the constraints of the site (listed above) this is a case where *"even at low densities there are sites and buildings that are highly vulnerable to being overshadowed"*. Even in mid-winter, direct sunlight still reaches the upper terrace areas for several hours between 9am and 3pm; and the kitchen windows for a small part of the day between 12noon and 3pm. Finally, the proposal is not a poor design. As described above, multiple design considerations have been incorporated to maximise the amount of sunlight to No. 203 Riverview Road.

Overall, the proposal, while not strictly complying with the requirements of the control, meets the criteria for a variation and meets the objectives of the control.

Having regards to the above assessment it is concluded that the proposed development is consistent with the relevant objectives of P21DCP 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.

C1.5 Visual Privacy

Description of non-compliance

Clause C1.5 requires private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9.0m by building layout, landscaping, screening devices or greater spatial separation (measured from a height of 1.7m above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

Furthermore, in the Land and Environment Court Case *Meriton v Sydney City Council* [2004] NSWLEC 313 Senior Commissioner Roseth established a planning principle for the protection of visual privacy where it was considered that "generalised numerical guidelines..., need to be applied with a great deal of judgment, taking into consideration density, separation, use and design." The principles state:

- *The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.*
- *Privacy can be achieved by separation. The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the objective should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)*
- *The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.*
- *Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.*
- *Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.*
- *Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.*
- *Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.*

The development has been generally designed to address overlooking by locating some living room windows and terraces away from habitable room windows, balconies and private open space area on neighbouring properties.

However, the plans indicate that the following elements could either result in actual overlooking, or the perception of being overlooked into neighbouring properties, and are therefore examined in detail against the above requirements and objectives:

First Floor

- Window (south facing) to study;
- Balcony (west/north/south facing) to master bedroom;
- Window (south facing) to master bedroom;
- Window (north facing) to entry; and
- Access stairs from carport to ground floor.

The north facing window serving the entry is facing the neighbouring property front setback. As this window adjoining a transitional area, it is not considered privacy treatments are required.

The window servicing the master bedroom is not likely to be accommodated as regularly than the living room located on the Ground or Lower Ground Level or the swimming pool/decking on the Pool Level. Similarly, the balcony that services the master bedroom is not likely to be used as regularly as the terraces at Level 01 (swimming pool) or Level 03 (living room).

As noted in the planning principle above, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time, therefore it is not considered privacy treatments are required.

However, the balcony area serves a purpose beyond that which the Court considered to be typically intended for bedroom use, as the balcony is designed to be used as an outdoor area in which to actively stand and/or sit (i.e. not sleep). Due to the significantly elevated nature of the First Floor balcony and the spatial distance (i.e. 2.4m to the southern boundary, and 7.2m to the northern boundary), there is real potential to overlook the existing windows and open space area of the neighbouring properties. It is recommended that privacy screens are installed on both elevations to prevent overlooking.

It is acknowledge that there is a planter box is proposed on the northern elevation of the balcony to assist in privacy mitigation, however this will not preventing the unreasonable downward viewing onto the neighbouring windows (i.e master bedroom window) and private open space areas.

It is considered that the proposed access stairs from the carport to the Ground Floor are a transitional area with limited potential for unreasonable overlooking.

Ground Floor

- New glazed doors (north facing) to lounge room;
- New windows (north facing) to the living room;
- New deck area (north/south/west facing) to the living room;
- New door (south facing) to lounge room;
- New window (south facing) to the pantry; and
- New Window (south facing) to the dinning room.

The north facing windows to the living room are directed towards the front and side setback area of No. 207 Riverview Road. These additional windows are located 1.1m from the northern side boundary, elevated above ground level of the neighbouring front entry area and adjoining neighbouring windows. Therefore it is recommended that privacy screens are installed to these windows to prevent unreasonable overlooking.

The south facing window to the dinning room is positioned to take advantage of the view lines to Pittwater waterway. However, this window is located 0.9m from the southern side boundary and elevated above ground level thereby enabling direct overlooking to the private open space areas of the southern adjoining site. Therefore, it is recommended that a privacy screen is installed to the window to prevent unreasonable overlooking.

The new door servicing the lounge room, due to its close proximity to the southern boundary (1.4m), will be required to be of solid non-transparent material or opaque glazing to ensure privacy impacts are mitigated.

The new doors adjoining the new lounge area are located a sufficient distance (7.3m) from the northern side setback, and adjoin a ground level court yard, thereby limiting any unreasonable privacy impacts.

While it is appreciated that the locating the planter box on the northern side of the deck area adjoining the living room is to mitigate potential overlooking, this will not be sufficient due to the significant elevation and close location (1.2m) to the northern side setback. It is recommended that

privacy screens are installed to the northern elevation to prevent direct and downward viewing onto the neighbouring windows and private open space.

Lower Ground

- New doors (north facing) to lounge room; and
- New windows (north facing) to bedroom 1.

The window servicing bedroom 1 is not likely to be accommodated as regularly than the living room located on the Ground or Lower Ground Level or the swimming pool/decking on the Pool Level. As noted in the planning principle above, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time, therefore it is not considered privacy treatments are required.

The new door servicing the lounge room, due to its close proximity to the southern boundary (1.1m), will be required to be of solid non-transparent material or opaque glazing to ensure privacy impacts are mitigated.

Pool Level

- New door (north facing) to the outdoor room;
- New deck area (north facing);
- New access stairs (west facing);
- New swimming pool and spa; and
- New decking (south facing).

The deck area is in close proximity (0.3m) from the northern boundary and elevated such that downward viewing is possible. In this respect, it is considered that the conditioned spatial distance of a minimum of 1m, to avoid the potential overlooking viewing while still allowing for a sufficient landscaping area to screen the proposal.

The new door servicing the lounge room, due to its close proximity to the southern boundary (2.0m), will be required to be of solid material or opaque glazing to ensure privacy impacts are mitigated.

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

Comment:

The conditioned proposed is adequately so does not result in any unreasonable overlooking.

- *A sense of territory and safety is provided for residents.*

Comment:

Given the above, a suitable sense of territory and safety is provided for the subject site and adjacent sites.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, subject to conditions, in this particular circumstance.

C1.25 Plant, Equipment Boxes and Lift Over-Run

To ensure that the swimming pool pump does not give rise to any adverse acoustic impacts a condition will be imposed to ensure the swimming pool pump is contained within a sound proof enclosure.

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

D1.1 Character as viewed from a public place

The proposed carport, with a minimum setback of 0.2m - 0.5m from the front property boundary, is inconsistent with the requirements of this clause, which prescribe that parking structures must not be the dominant site feature when viewed from a public place, and should be located behind the building line, preferably setback further than the primary building.

However, the proposed siting of the carport structure provides a larger front setback than the existing 0.0m - 1.3m, and demonstrates consistency with the permitted variation prescribed by the front building line development control, which allows parking forward of the front building line on steeply sloping sites.

As a result, the modernised presentation of the proposed carport is consistent with other parking structures along this particularly steep stretch of Riverview Road. The siting of the proposed carport is supported on merit, as the proposal is compatible with the character of Riverview Road, and will not detract from consistency with the outcomes of this development control.

The dwelling whilst large, has a proposed design that is well articulated and will present as a one storey dwelling house from the Riverview Road streetview. The visual impact of the proposed works will be lessened over time with the growth of the proposed landscaping, and ultimately, there will be a significant improvement in the presentation to Pittwater.

D1.8 Front building line

Description of non-compliance

The proposed development is inconsistent with the 6.5m minimum front building line prescribed by this development control. The non-compliance with the front setback is as follows:

- Carport 0.2m - 0.5m
- First Floor Dwelling 6.1m - 8.0m
- Lounge area of the Ground Floor 3.3m - 4.6m (sited behind existing built form)

As discussed with respect to clause D1.1 of P21 DCP, the siting of the proposed carport is consistent with a prescribed variation which permits parking structure forward of the building line on steeply sloping sites. However, this variation requires all other structures to be set back in accordance with the 6.5m minimum building line prescribed, and as such, the siting of a small portion of the dwelling house and the new lounge area of the lower Ground Floor are inconsistent in this regard.

Despite non-compliance with the minimum front building line, the siting of the First Floor Dwelling and lounge area of the lower Ground Floor is considered to be an appropriate solution for the site,

reducing extent of disturbance on the environmentally sensitive site.

The siting of the dwelling house First Floor and Ground Floor additions as a whole is considered to be acceptable on merit, particularly as the proposal otherwise achieves consistency with the outcomes of the front building line development control, as follows:

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

Comment:

The siting of the carport, minor encroachment of the First Floor and the additional dwelling elements on the Ground Level do not detract from consistency with the desired character prescribed for the Avalon Beach Locality.

The proposal satisfies this requirement.

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

Comment:

Not applicable - the site is not adjoining a main road.

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

Comment:

The site contains a number of existing canopy trees, some of which are proposed for removal to facilitate the development. However, a considerable portion are to be retained, including the more significant species on the site, with enhancement plantings proposed. As such, the proposed development is considered to appropriately retain and enhance vegetation on the site, to reduce the visual impact of the proposed built form as seen from the public domain.

The proposal satisfies this requirement.

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

Comment:

Vehicular movement in a forward direction is not facilitated by the proposal. However, as prescribed by clause B6.2 of P21 DCP, the provision for vehicles to enter and leave in a forward direction is not required for this site, irrespective of the front setback proposed.

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

Comment:

The proposed parking solution has been designed with adequate site lines, to maximise pedestrian safety. Furthermore, the structure itself is of a high quality design, finished in materials that will blend with the natural surrounds, resulting in an attractive presentation to the street.

The proposed Lounge Room on Ground Level will be situated below street level as demonstrated within Figure 6 and 7 below. Therefore, the character of Riverview Road will remain unaffected by the built form of the Lounge Room.



Figure 6: The location of the lounge room below the Riverview Road street level. **Figure 7:** Street view of the proposal from Riverview Road.

The retention of the canopy trees and landscaping within the front boundary will soften the built form and is consistent with the bushland character of Riverview Road and the Locality.

The proposal satisfies this requirement.

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

Comment:

The siting of the carport, First Floor and Ground Level Lounge Room is consistent with other structures along Riverview Road. The proposal will present as a one storey dwelling house from Riverview Road, with the below built form below the Riverview Road level.

When viewing the total streetscape in Riverview Road, it is evident that landscaped areas feature prominently and provide a 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 Riverview Road boundary. Overall, the proposal ensures new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment and retains sufficient canopy trees and landscaping to soften and screen the built form.

The proposal satisfies this requirement.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP 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.

D1.9 Side and rear building line

Description of non-compliance

The existing dwelling is located 1.2 metres from the northern side boundary and 0.9 metres from the southern side boundary, which represents a non-compliance with the numerical requirements of this control.

The proposed alterations and additions seek to retain the existing side walls on all three existing levels and to increase these side setbacks on the proposed First Floor, or fourth level.

The side setbacks of the proposed additions are as follows:

First Floor

North

- 5.0m Entry
- 5.1m - 7.3m Dwelling House Additions
- 7.1m Carport

South

- 0.0m Planter
- 0.5m Access Stairs
- 2.0m - 2.5m Dwelling House

Ground Floor

North

- 1.1m Planter (balcony)
- 1.2m - 7.2m Dwelling House

South

- 1.5m - 2.6m Dwelling House

Lower Ground Floor

North

- 1.2m Dwelling

South

- 1.1m Deck (existing)

Pool Level

North

- 2.1m Dwelling House
- 0.3m Deck
- 1.3m Access Stairs

South

- 1.1m Pool Area
- 3.1m Swimming Pool

The control includes a variation which allows the maintenance of existing side setbacks where alterations and additions are proposed; given the substantive retention of these existing walls, no concern is raised.

The dwelling itself does not move closer to this boundary than the existing dwelling, however external works are proposed within the northern side setback relating to the rebuilding and repositioning of external staircases and decks, which have amenity impacts to the adjoining properties.

Overall, the proposal (as conditioned) is supportable on merit, as the design is consistent with the outcomes of this control, as follows:

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

Comment:

The proposed development is consistent with the desired character of the Avalon Beach Locality.

The proposal complies with this outcome.

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

Comment:

The proposed non-compliant additions to the dwelling house are minor in scale, with the new upper level compliant with the side setback requirements. However, additional deck area within the northern setback adds to the excessive bulk and scale of the built form, particularly as the location removes vital landscaping areas that would assist in softening the built form.

The northern deck area is to be conditioned to be located a minimum of 1m from the northern boundary, with the access stairs within the southern setback to be removed, and these areas maintained as landscaping. It is considered that the development (as conditioned) has been sufficiently articulated to visually define the dwelling within the shape and topographical context of the site.

The southern side access stairs are visually identifiable from the Riverview Road street view, and are adjoining the three storey elevation of the southern adjoining site. The stairs are considered a transitional area, therefore minimising unreasonable privacy impact. The stairs do not remove an area of landscaping that would be considered reasonable in size in order to incorporate landscaping features to screen and soften the built form. Therefore, the stairs are considered reasonable in this instance.

The proposal (as conditioned) complies with this outcome.

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

Comment:

The proposal will not result in any unreasonable impacts upon views to/from public/private

places.

The proposal complies with this outcome.

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

Comment:

As above, the proposed additions are sited such that they will not result in any unreasonable impacts upon views to/from public/private places.

The proposal complies with this outcome.

- ***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 additions within the northern and southern side setback create amenity and privacy impacts to the neighbouring sites. Due to the proximity to the neighbouring windows, and private open space areas, the northern deck area is to be conditioned to be located a minimum of 1m from the northern boundary, and this area maintained as landscaping.

Therefore, the proposal (as conditioned) will maintain reasonable privacy and general amenity to neighbouring properties.

The proposal complies with this outcome.

Reasonable levels of solar access is achieved for the southern adjoining site.

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

Comment:

The proposed development provides for substantial landscaping within the foreshore area and within the front setback to Riverview Road.

The proposal complies with this outcome.

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

Comment:

The proposed non-compliant additions demonstrate a flexible design solution that provides for the modernised design for the existing dwelling house.

The proposal complies with this outcome.

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

Comment:

With the conditioned removal of the southern access stairs and the decking within the northern side setback, additional vegetation areas will be retained. Sufficient areas within the front and rear setback are to be retained and enhanced, to screen the proposed non-compliant elements as seen from the neighbouring sites and the waterway.

The proposal (as conditioned) complies with this outcome.

- **A landscaped buffer between commercial and residential zones is achieved.**

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of PLEP 2014 / P21DCP 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.

D1.11 Building envelope

Description of non-compliance

The existing dwelling exhibits significant non-compliance with the side building envelope requirements.

The proposed development involves additional areas that protrude beyond the existing envelope breach on both side boundaries.

These additional side envelope breaches areas include the following:

- Northern Elevation: two additional areas measuring: up to 3.3m (height) and 5.5m (width) and a 1.6m (height) and 4.4m (width)
- Southern Elevation: two additional areas measuring: up to 2.3m (height) and 12.3m (width) and a 3.3m (height) 2.0m (width)

The existing dwelling includes non-compliance with the stated building envelope from the north to the north western corner and south to the south western of the upper level, caused by the significant slope of the site from front to rear. The proposed bedrooms of the lower ground floor of the dwelling are proposed to project further to the west, meaning that a further breach results. The proposed First Floor introduces a new non-compliance with the building envelope control, particularly on the southern elevation.

The figures below shows the location and extent of the non-compliance.

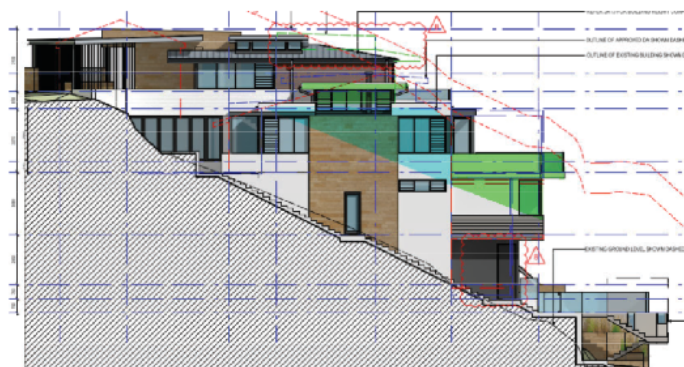


Figure 8: Additional envelope breach on the northern elevation shown in green, existing envelope

breach shown in blue.

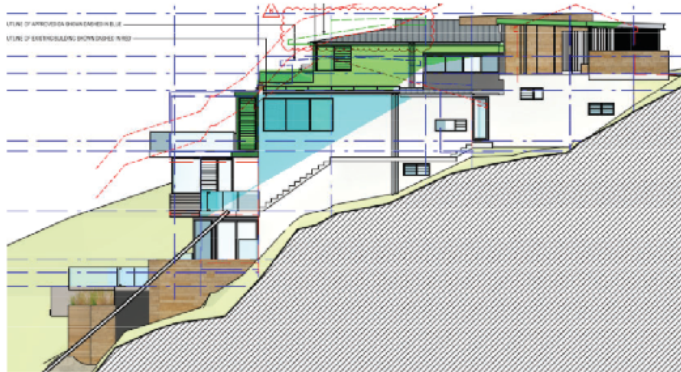


Figure 9: Additional envelope breach on the southern elevation shown in green, existing envelope breach shown in blue.

A consideration of the proposed breach against the relevant outcomes of the control is provided below:

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

Comment:

The non-compliance is influenced by the sloping topography of the site. The proposal is well articulated along front and side of the dwelling with a varied roof line. The areas of encroachment demonstrates consistency with the desired future character of the locality with the siting of the dwelling maintaining the landforms, landscapes and other features of the natural environment.

The proposal complies with this outcome.

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

Comment:

The development is situated predominately over the existing building footprint and does not alter the existing topography of the site. The proposed development presents a more modern and improved design, with the First Floor addition compliant with the maximum building height, with the new carport below the height of the existing carport roof line. The encroachment is considered satisfactory in regards to the design, scale, bulk and the height of the proposal. Furthermore, the resultant built form will be maintained below the existing tree canopy. The building form and density respond to the natural land form of the site which will be below the height of the trees of the natural environment.

The proposal complies with this outcome.

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

Comment:

The facade of the dwelling on the north and south elevation is sufficiently modulated to respond aspect of the site and its steep slope. The resultant development is considered to be a sensitive design response in consideration of the natural characteristics of the site, with

the retention of existing canopy trees and the enhancement of landscaping.

The proposal complies with this outcome.

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

Comment:

The area of the dwelling outside of the envelope is typified by a variation in facade treatments and structures. The proposed resultant dwelling is of comparable building bulk and scale to existing and approved developments in the locality.

The development steps with the topography of the land, and the proposed height is mostly compliant with the building height development standard.

Finally, the proposal will include adequate vegetation in order to screen the built form of the proposed development.

In light of the steep topography, the significant articulation along the northern and southern facade and noting that the built form non-compliance is compliant with the building height, attempts to ensure the bulk and scale of this portion of the development has been minimised.

The development complies with this outcome.

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

Comment:

A more detailed analysis of view loss is provided elsewhere in this report. In summary, the proposed development will not result in any significant view loss that would warrant refusal of the application.

The development complies with this outcome.

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

Comment:

There will be no adverse amenity impact in regard to privacy or solar access (subject to conditions) as a result of the proposed breach of the Building Envelope.

The development complies with this outcome.

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

Comment:

The proposed dwelling is sited in a manner that will retain existing vegetation and enhance the future viability of the vegetation community that exists on the site.

The development complies with this outcome.

In conclusion, despite the breach of the building envelope control, the development has demonstrated achievement of the Outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP 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.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The proposed landscaped area does not meet the 60% landscaped area requirement under this control.

The proposed development results in a 11.9sqm reduction of landscaped area, to provide a landscape area of 394m² or 51.7%, which is a variation of the 60% minimum requirement.

However, the control provides for the inclusions of pathways and certain hard surfaces (up to 6% of the site associated with recreation areas), if the proposal is consistent with the outcomes of the control.

As a result, when taking into account the variations for outdoor recreational area and pathways, the revised landscape area is 58% or 440.6m.

This represents an overall reduction of 1% from the existing provision of 552.5sqm or 59%. The conditioned removal of the elevated deck area from the northern side setback will allow additional areas of landscaping to increase the overall landscape provision.

Due to the inclusion of the pathways and certain hard surfaces, a merit assessment has been undertaken to ensure the proposal is consistent with the outcomes of the control.

The application of the variation is considered to be warranted, as the outcomes of the control are achieved as follows:

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

Comment:

The proposed development is inconsistent with the desired future character of the Avalon Beach Locality, as the proposal provides adequate opportunities to ensure that the visual impact of the development is secondary to landscaping. In addition, it can be said that the proposal has been effectively integrated within the landform, through developing a considerable landscape buffer areas in the front and rear of the site.

The proposal does not comply with this outcome.

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

Comment:

The proposed (as conditioned) will provide sufficient landscape buffers, which will assist in visually breaking down the built form, particularly with the removal northern deck area from the setbacks, reinstatement of landscaping in this area, and retention of the significant canopy trees on the site. Overall, it is considered that the proposal's design reasonably mitigates the visual impact of the built form.

The proposal does not comply with this outcome.

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

Comment:

The proposal (as conditioned) will not result in any unreasonable impact on light, solar access or privacy. This is as a result of the sufficient orientation and separation of windows.

The proposal complies with this outcome.

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

Comment:

The proposal involves a landscaped area of 58% (440.6sqm), whereas the control requires a minimum of 60% (457.4sqm). In proposal (as conditioned) will provide adequate areas for the retention and establishment of more considerable planting, particularly in the side setbacks, front, and rear setback between the waters edge and the proposed swimming pool. In this regard, the proposal provides adequate areas for substantial planting, to visually reduce the built form.

The proposal complies with this outcome.

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

Comment:

The proposed development, which is primarily constructed on piers, is a sensitive solution for the constrained site that preserves the natural features and biodiversity. Native trees and vegetation are retained as part of the proposal. In addition, the development is supported by Council's Natural Environment Biodiversity and Landscaping Team.

The proposal complies with this outcome.

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

Comment:

The development will provide sufficient areas that are of soil depth for the infiltration of stormwater. It is considered that stormwater runoff will not be reasonably reduced as a result of this proposal. Subject to conditions recommended by Council's Development Engineers, stormwater will be appropriately managed on the site.

The proposal complies with this outcome.

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

Comment:

The subject include two areas capable for the establishment of deep soil planting. The street frontage will include one landscaped area, while the rear setback will include much larger landscaped area between the mean Pittwater waters edge and the proposed swimming pool area.

Overall, the proposal provides reasonable opportunities within the site for the establishment of any trees and landscape features, resulting in the proposal integrating with the landscaping and bushland character of the escarpment and the locality.

The proposal complies with this outcome.

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

Comment:

A considerable proportion of the hard surface areas proposed are elevated above ground and permeable, maximising water infiltration. Furthermore, subject to conditions of consent, Council is satisfied that stormwater will be appropriately managed on the site.

The proposal complies with this outcome.

Based on the above, the proposed landscape area in this instance is supported on merit and considered to satisfy the outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$21,868 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,186,800.

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

This assessment has taken into consideration the amended plans, Statement of Environmental Effects, written submission for the variation prescribed by 4.3(2D) of Pittwater Local Environment Plan 2014, other documentation supporting the application and public submissions.

The proposal does not result in unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

The applicant's written request for a variation prescribed by 4.3(2D) of Pittwater Local Environment Plan 2014 seeking to justify a contravention of clause 4.4 Building Height development standard has adequately addressed and demonstrated the compliance with the criteria of the clause and there is sufficient planning grounds to support the minor variation.

The critical concerns relating to the view loss, the side setbacks, and building envelope have been determined to not cause unacceptable and reasonable impacts on the privacy, amenity and view impacts to the adjoining properties.

Five (5) submissions were 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. A number of concerns each raised in the submissions are concurred with by Council's assessment of the application, particularly those relating to impacts upon the privacy levels, however conditions have been applied to address these concerns.

The proposal displays reasonable scale and density compatible with the surrounding development of Riverview Road.

Accordingly, the application is referred to the DDP with a recommendation for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/1069 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 4 DP 18667, 205 Riverview Road, AVALON BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Analysis A001 Rev B	January 2019	Mark Hurcum Design Practice
Demolition Plan - Site/Roof A010 Rev A	January 2019	Mark Hurcum Design Practice
Demolition Plan - Pool Level A011 Rev A	June 2019	Mark Hurcum Design Practice
Demolition Plan - Lower Ground Floor A012 Rev A	June 2019	Mark Hurcum Design Practice
Demolition Plan - Ground Floor A013 Rev A	June 2019	Mark Hurcum Design Practice
Demolition Plan - First Floor A014 Rev A	June 2019	Mark Hurcum Design Practice
Pool Level Plan A101 Rev B	February 2019	Mark Hurcum Design Practice
Lower Ground Floor Plan A102 Rev A	November 2018	Mark Hurcum Design Practice
Ground Floor Plan A103 Rev B	March 2019	Mark Hurcum Design Practice
First Floor Plan A104 Rev B	March 2019	Mark Hurcum Design Practice
Roof Plan A105 Rev B	November 2018	Mark Hurcum Design Practice
Northern Elevation A201 Rev B	November 2018	Mark Hurcum Design Practice
South Elevation A202 Rev B	November 2018	Mark Hurcum Design Practice
East Elevation A203 Rev B	November 2018	Mark Hurcum Design Practice
West Elevation A204 Rev B	November 2018	Mark Hurcum Design Practice
Section A-A A301 Rev B	November 2018	Mark Hurcum Design Practice
Section B-B A302 Rev B	November 2018	Mark Hurcum Design Practice

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment	11 September 2019	JK Geootechnics
Arboricultural Impact Assessment	12 September	NSW Tree

	2019	Services
Landscape Design Statement	18 September 2019	Landforms

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

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
Front Entry Landscape Plan 1 of 2	22/08/2019	Landforms
Pool Level Landscape Plan 1 of 2	22/08/2019	Landforms

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) The works must comply with the relevant Ausgrid Network Standards and

SafeWork NSW Codes of Practice.

- (n) 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 \$21,868.00 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 \$2,186,800.00.

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

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

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

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

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

5. Security Bond

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

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

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

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JK Geotechnics dated 11 September 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

7. Amendments to the approved plans

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

1. **First Floor** - A 0.65 metre privacy screen (measured from the top of the planterbox) is to be erected along the northern length of the outermost northern edge of the balcony located off the Master Bedroom as shown on the approved plans.
A 1.65m privacy screen (measured from finished floor level) is to be erected for the entire southern length of the outermost southern edge of the balcony located off the Master bedroom as shown on the approved plans.
The privacy screens shall be of louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development or the glass to be fitted with obscured glazing.
2. **Ground Floor** - Privacy screens are to be installed on the Ground Floor northern windows adjoining the Living Room as shown on the approved plans.
The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
3. **Ground Floor** - Privacy screens are to be installed on the Ground Floor southern window adjoining the Dining Room as shown on the approved plans.
The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
4. **Ground Floor** - The door on the southern elevation adjoining the lounge room is to be of solid construction, or obscured glazing.
5. **Ground Floor** - A 0.75 metre privacy screen (measured from the top of the planterbox) is to be erected along the northern length of the outermost northern edge of the planter box/balcony located off the Living Room as shown on the approved plans.
The privacy screens shall be of louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development or the glass to be fitted with obscured glazing.
6. **Lower Ground Floor** - The door on the northern elevation adjoining the lounge room is to be of solid construction, or obscured glazing.
7. **Pool Level** - The door on the northern elevation adjoining the outdoor room is to be of solid construction, or obscured glazing.
8. **Pool Level** - The proposed elevated decking and access stairs within the northern boundary (servicing the pool level) is to maintain a 1.0m northern side setback.

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. **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.

9. 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.

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. Light colours such as off white, cream, silver or light grey colours are 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 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.

14. 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.

15. Pre-Commencement Dilapidation Report

A Pre-Commencement Dilapidation Report of adjacent buildings (No. 203 and No.207 Riverview Road, Avalon) must be conducted prior to any site work.

The Pre-Commencement Dilapidation Report must clearly detail the condition of all the adjoining properties, infrastructure, natural and manmade features within the likely “zone of influence” of any excavation or construction induced vibration.

A copy of the Pre-Commencement Dilapidation Report must be provided to Council, any other owners of public infrastructure, the owners of adjoining and affected private properties and the Certifying Authority prior to the issue of the Construction Certificate.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. 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 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 12 September 2019 prepared by NSW Tree Services P/L 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

local 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.

17. 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 12 September 2019 prepared by NSW Tree Services P/L 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.

18. 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

19. 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.

20. 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.

21. Survey Certificate

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

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

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

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

22. Vehicle Crossings

The Applicant is to reconstruct the existing vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 Normal 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 Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

23. Protection of rock and sites of significance

- a) All rock outcrops outside of and below 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.

24. Priority and environmental weeds

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

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

25. Aboriginal Heritage

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

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

Reason: Aboriginal Heritage Protection.

26. 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.

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

27. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Principal 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 with conditions of consent for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

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

28. Stormwater Disposal

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

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

29. Post-Construction Dilapidation Report

A Post-Construction Dilapidation Report of adjacent buildings (No.203 and No.207 Riverview Road) must be conducted prior to the issue of the Occupation Certificate.

The Post-Construction Dilapidation Report must clearly detail the final condition of all the adjoining properties, infrastructure, natural and manmade features that were originally

recorded in the Pre-Commencement Dilapidation Report.

A copy of the Post-Construction Dilapidation Report must be provided to Council, any other owners of public infrastructure, the owners of adjoining and affected private properties and the Certifying Authority prior to the issue of the Occupation Certificate.

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

30. Geotechnical Certification Prior to Occupation Certificate

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

Reason: To ensure geotechnical risk is mitigated appropriately.

31. New Vegetation Planting

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

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

32. 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)

33. Waste Management Confirmation

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

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

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

34. Control of Weeds

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

Reason: Weed management.

35. Retention of Natural Features

All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To ensure the retention of natural features.

36. 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.

37. Works to cease if item found

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

Reason: To protect Aboriginal Heritage.

38. 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.

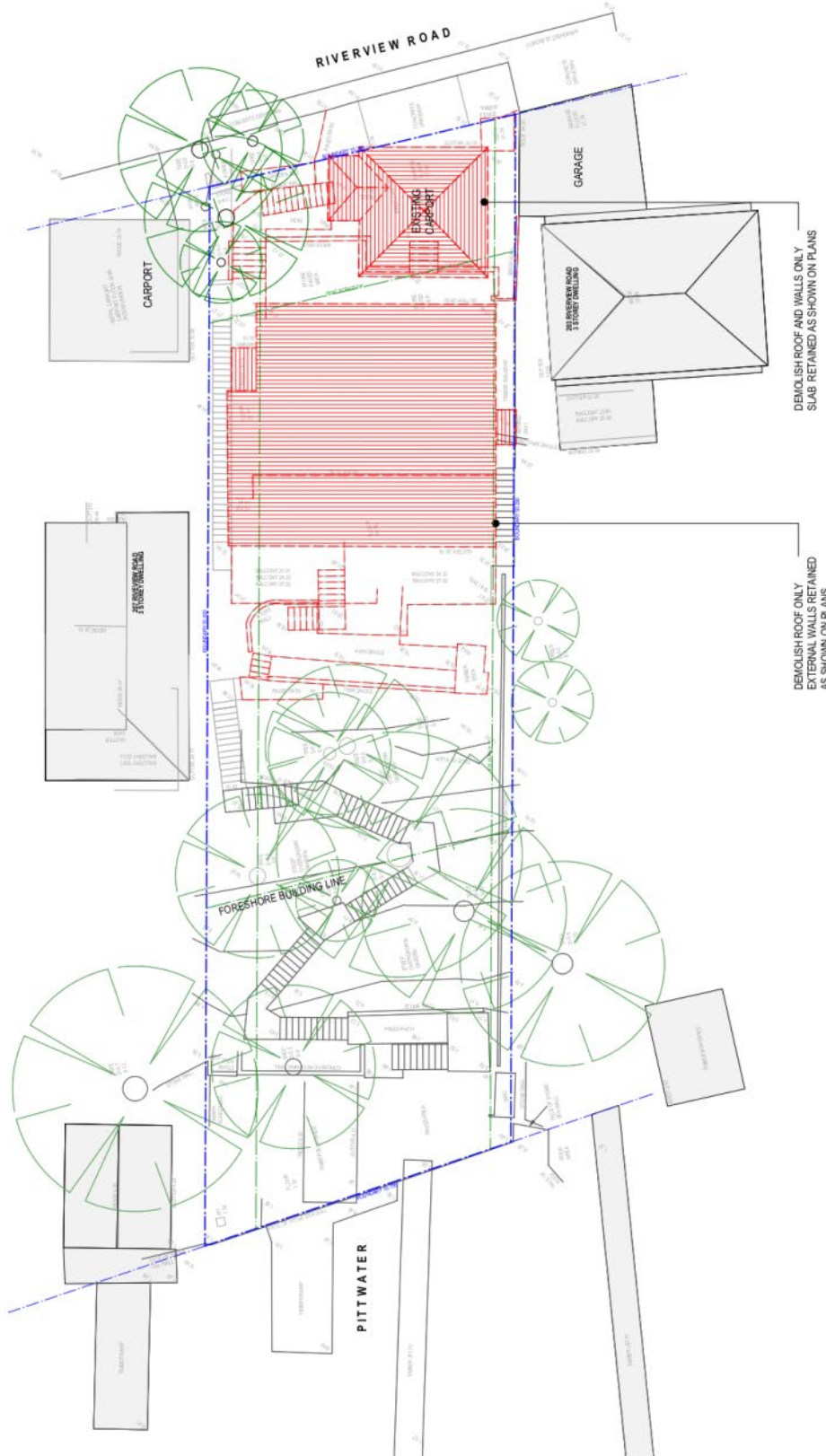
39. **Swimming Pool Filter and Pump**

The swimming pool filter and pump is to be enclosed and remain in a sound proof enclosure and is to not emit noise over 5dba above background noise at the nearest residential boundary.

Reason: to protect the acoustic amenity of neighbouring sites.

LEGEND
EXISTING WALLS
EXISTING WALLS
TO BE DEMOLISHED
EXISTING FEATURES
TO BE DEMOLISHED

LEGEND
EXISTING WALLS
EXISTING WALLS
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TO BE DEMOLISHED



MARK WILSON DESIGN PRACTICE
LEVEL 2 271 ALKED STREET NORTH
WILSON DESIGN PRACTICE
PACIFIC MILLS 871 955 5448
TELEPHONE 021 9955 5448
10/1/2019
10/1/2019
10/1/2019

1824 A
ALTERATIONS AND ADDITIONS
205 RIVERVIEW ROAD AVALON BEACH
SCALE: 1:200
JANUARY 2019

FOR DEVELOPMENT APPLICATION

DEMOLITION PLAN - SITE / ROOF

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NORTH ELEVATION

ALTERATIONS AND ADDITIONS

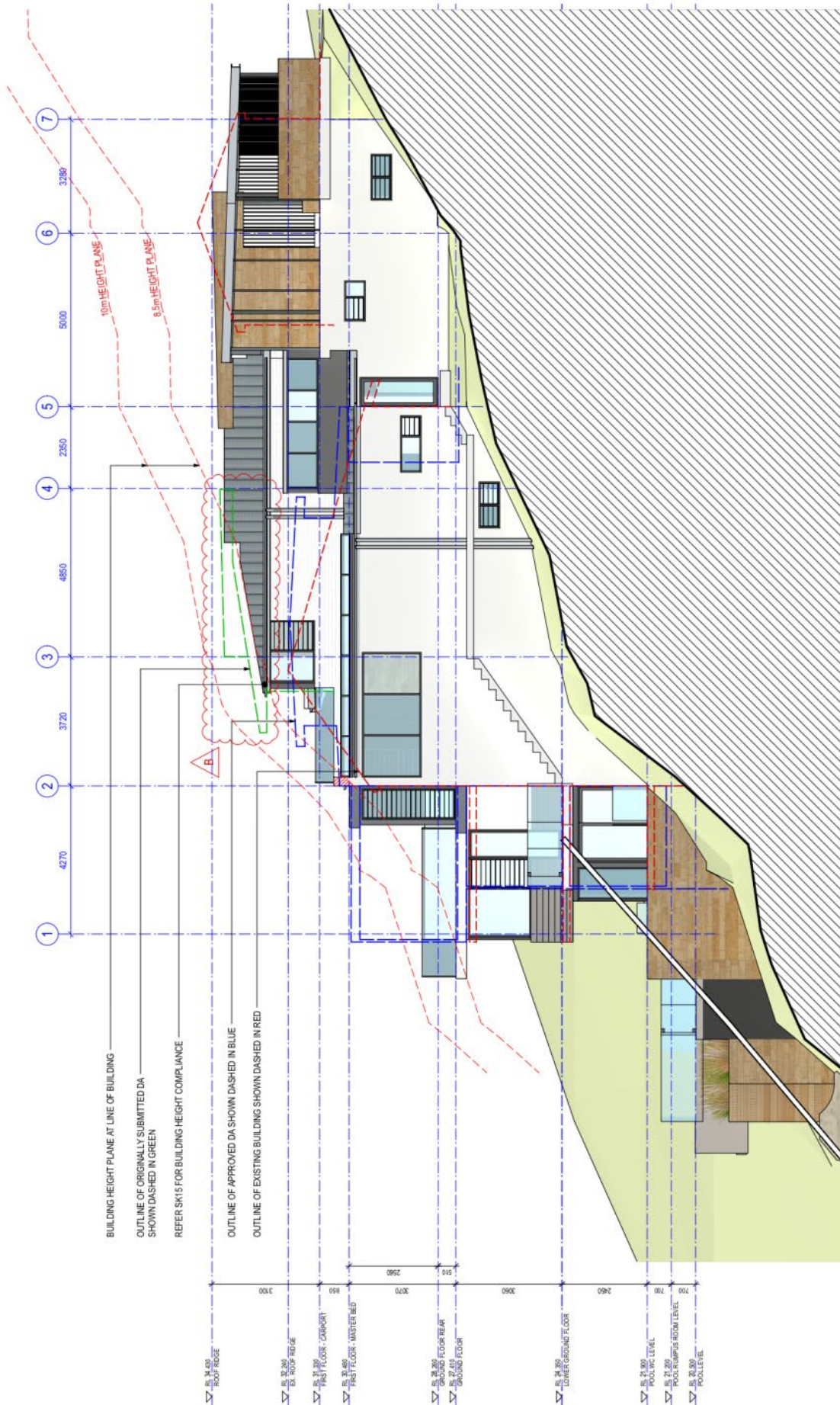
205 RIVERVIEW ROAD AVALON BEACH

SCALE: 1:100
NOVEMBER 2018

LEVEL 2 271 ALBERT STREET NORTH
NORTH SYDNEY NSW 2060
FACSIMILE 021 9955 5083
TELEPHONE 021 9955 5608

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FOR DEVELOPMENT APPLICATION

SOUTH ELEVATION

ALTERATIONS AND ADDITIONS

205 RIVERVIEW ROAD AVALON BEACH

1824 A202 B

MARK BURCOM DESIGN PRACTICE

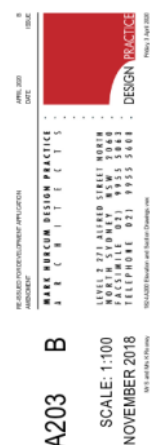
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SCALE: 1:100
NOVEMBER 2018

LEVEL: 205 RIVERVIEW ROAD AVALON BEACH
PROJECT NO: 1824 A202 B
TELEPHONE: 021 9955 5488
DESIGN PRACTICE

MARK BURCOM DESIGN PRACTICE

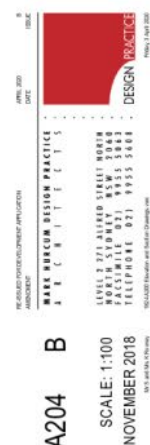


EAST ELEVATION

ALTERATIONS AND ADDITIONS

205 RIVERVIEW ROAD AVALON BEACH

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WEST ELEVATION

ALTERATIONS AND ADDITIONS

205 RIVERVIEW ROAD AVALON BEACH

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MARK HURDMAN DESIGN PRACTICE PTY LIMITED 2018

ITEM 3.5	DA2019/1175 - 55 WHEELER PARADE, DEE WHY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/285908
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuse** Development Consent to DA2019/1175 for alterations and additions to a dwelling house on land at Lot B DP 338618, 55 Wheeler Parade, Dee Why, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1175
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot B DP 338618, 55 Wheeler Parade DEE WHY NSW 2099
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	Yes
Owner:	Antaine Seamus Furlong Elizabeth Rebecca Furlong
Applicant:	Studiojla
Application Lodged:	24/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/11/2019 to 20/11/2019
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	4.3 Height of buildings: 24.7%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,450,000.00

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for alterations and additions to an existing dwelling house. Specifically, the following works are proposed;

1) Lower Ground Floor Level

- Alteration to the wall on the western side of the entry porch and provision of a new front door.

2) Ground Floor Level

- Demolition of existing external and internal walls and deletion of existing kitchen, dining and

- living rooms, master bedroom and two (2) bedrooms;
- Construction of new external walls with generally increased side setback comprising substantial expanses of glass interspersed by a singular frosted glass panel and privacy screen sliding system;
- Provision of four (4) bedrooms, bathroom and laundry and alfresco dining area and new stairs and hallways/corridors; and
- New master bedroom with gravel roof extending to the east of the lower ground floor level over the driveway.

3) Level One

- Demolition of existing external and internal walls and deletion of existing bedrooms, bathroom, living room and balcony;
- Construction of new external walls with substantial increase to southern side setback comprising substantial expanses of glass interspersed by a privacy screen sliding system and vertical privacy louvers;
- Provision of retreat area, skylight over downstairs alfresco area, dining room, kitchen, living room and outdoor living area expanded to the east partially over the master bedroom below; and
- Rolled metal roof.

4) Landscape Plan

- Provision of landscaping adjacent the side and rear boundaries.

5) Stormwater

- Existing stormwater system retained and water shall be gravity fed to Wheeler Parade.

ASSESSMENT INTRODUCTION

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

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

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot B DP 338618 , 55 Wheeler Parade DEE WHY NSW 2099
Detailed Site Description:	<p>The subject site is battle-axe in shape, has an area of 885.2m² and is located on the western side of the road. A three storey dwelling house and swimming pool occupy the high western section of the site. From the street, the driveway rises between 3.0m and 4.0m to the upper portion of the dwelling. Vehicular access to the site is provided from Wheeler Parade.</p> <p>Landscaping comprises retained garden areas, grass lawns and shrubs. Sandstone rock outcrops are located underneath the front portion of the dwelling and is observed outcropping on the site and surrounding areas.</p> <p>The subject site is zoned R2 Low Density Residential, affected by landslip and adjoins Wingala Reserve Headland to the west. Adjoining and surrounding development is characterised by a mixture of modern and traditional style two and three storey dwelling houses in landscaped settings.</p>

Map:



SITE HISTORY

Land and Environment Court Proceedings

A Class 1 appeal in the Land and Environment Court of NSW against Council's deemed refusal of Development Application DA2019/1175 was lodged on 6 February 2020.

Request for Withdrawal of this Development Application DA2019/1175

This application was received by Council on 24 October 2019.

A Request for Withdrawal letter dated 18 December 2019 was sent to the Applicant requesting that the application be withdrawn as assessment found several substantial planning control non-compliances and amenity impacts, details of which are provided in detail below.

Council was advised that a response would be provided by 3 February 2020. However, no response was provided to the letter in terms of either withdrawing the application or allowing the current application to be determined by Council.

- 1) Planning Principle: The extent of demolition: alterations and additions or a new building: As established under Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187, the development is deemed a new structure (dwelling house) and not alterations and additions.
- 2) WLEP 2011 cl. 4.3 Height of buildings & cl. 4.6 Exceptions to development standards: The development provides a maximum height of 10.6m which substantially exceeds the maximum 8.5m building height standard. The applicant does not demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, particularly as the height of the dwelling will cause loss of views, privacy and solar access to adjoining properties.
- 3) WDCP cl. D2 Private Open Space: The private open space of adjoining properties will be adversely affected by the development, including loss of privacy, overshadowing, visual outlook impacts and future development of the area.
- 4) WDCP cl. D6 Access to Sunlight: Submitted shadow diagrams show an unacceptable amount of

overshadowing of the private open space of No. 94 Headland Road will occur as a consequence of the development, including the new level 1 and ground floor level master bedroom.

5) WDCP cl. D7 Views: View sharing is not achieved by the development. Specifically, the development will generate unreasonable view loss to the residents of No. 51A Wheeler Parade.

6) WDCP cl. D8 Privacy: Unacceptable privacy impacts will occur from overlooking from the dwelling into the private open space of No. 94 Headland Road and south elevation windows of No. 51 Wheeler Parade.

Building Certificate BC2017/0127 for a dwelling house and swimming pool was granted by Northern Beaches Council on 5 December 2017.

Development Consent DA2011/0976 for alterations and additions to a dwelling house was granted by Warringah Council on 10 September 2011.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” The proposal is assessed as not satisfying the requirements of Warringah Local Environmental Plan 2011 (WLEP 2011) cl. 4.3 Height of buildings & 4.6 Exceptions to development standards. In summary, the development does not demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case. Also, the height of the dwelling will cause disruption of views, loss of privacy and loss of solar access to adjoining properties. For these planning reasons, the application is recommended for refusal.
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 (WDCP) applies to this proposal. As detailed under this section of the report, the proposal is assessed as not complying with the following WDCP planning controls; 1) cl. B1 Wall Heights 2) cl. B3 Side Boundary Envelope 3) cl. B9 Rear Boundary Setbacks 4) cl. D1 Landscaped Open Space and Bushland Setting 5) cl. D2 Private Open Space 6) cl. D6 Access to Sunlight 7) cl. D7 Views 8) cl. D8 Privacy For these planning non-compliances, the application is recommended for refusal.

Section 4.15 Matters for Consideration'	Comments
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>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. Should the application be approved, these matters can be addressed via a condition of consent.</p> <p>Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Should the application be approved, this matter can be addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). Should the application be approved, this matter can be addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. Should the application be approved, this matter can be addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). Should the application be approved, this matter can be addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the WDCP section in this report. As provided above, the WDCP planning non-compliances form, in part, the basis for refusal of the application.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social</p>

Section 4.15 Matters for Consideration'	Comments
	<p>impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not considered suitable for the proposed development given the WLEP 2011 & WDCP planning non-compliances which are detailed throughout this report.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>See discussion on “Notification & Submissions Received” in this report.</p> <p>The concerns raised in the submissions to the proposed development include loss of privacy, views and solar access in addition to excessive building height, wall height and building envelope non-compliances. These concerns are concurred with and form reasons for refusal of the application.</p>
Section 4.15 (1) (e) – the public interest	Matters have arisen in this assessment that would justify the refusal of the application in the public interest. As detailed throughout the report, the proposal is not consistent with the planning controls under WLEP 2011 and WDCP and submissions against the proposal made by adjoining properties in response to the public exhibition of the application are concurred with.

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 7 submission/s from:

Name:	Address:
Mariangela Agostino	51 Wheeler Parade DEE WHY NSW 2099
Mr David William Martin	51 A Wheeler Parade DEE WHY NSW 2099
Mr Sherif Victor Hanna	PO Box 4336 NORTH CURL CURL NSW 2099
Mckees Legal Solutions	PO Box 7909 BAULKHAM HILLS NSW 2153
Mr Duane Antony Lankow	1 Burilla Avenue NORTH CURL CURL NSW 2099
Lisa Jane Comport	96 B Headland Road NORTH CURL CURL NSW 2099

Name:	Address:
Conrad Martin	51 A Wheeler Parade DEE WHY NSW 2099

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

- Excessively sized development
- Adverse neighbour impacts, including overshadowing, privacy, view loss, visual outlook impact, loss of enjoyment using private external space, increase noise levels
- View loss
- Loss of re-sale house value

The matters raised within the submissions are addressed as follows:

- Excessively sized development

Comment:

Consistent with the *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187, the application is assessed as being a new structure and not alterations and additions. A detailed qualitative and a quantitative analysis of what is proposed compared to what is currently in existence is provided under the Proposed Development in Detail section of this report.

The new three storey dwelling is elongated and traverses over the far western portion of the site (rear boundary) to the east, over the mid portion of the driveway. The new dwelling does not comply with the following planning controls:

- 1) WLEP 2011 cl. 4.3 Height of buildings
- 2) WLEP 2011 cl. A.5 Objectives
- 3) WDCP cl. B1 Wall Heights
- 4) WDCP cl. B3 Side Boundary Envelope
- 5) WDCP cl. B9 Rear Boundary Setbacks
- 6) WDCP cl. D1 Landscaped Open Space and Bushland Setting
- 7) WDCP cl. D2 Private Open Space
- 8) WDCP cl. D6 Access to Sunlight
- 9) WDCP cl. D7 Views
- 10) WDCP cl. D8 Privacy

The non-compliances outlined above, can be reviewed throughout the report in detail.

The extent of non-compliances reveal that the proposed development is excessive and not in keeping with relevant planning requirements. Therefore, the raised concerns are concurred with and warrant the refusal of the application.

- Adverse neighbour impacts

Comment:

The new development in conjunction with associated planning non-compliance will generate unreasonable and unacceptable neighbour impacts, including overshadowing, privacy, view

loss, visual outlook impact and loss of enjoyment using private external space.

In summary, the development and associated areas of non-compliance are recommended for refusal given the adverse neighbour impacts generated on adjoining premises including No. 51A Wheeler Parade and No. 94 Headland Road.

Noise levels are expected to be maintained at acceptable and reasonable levels.

The raised concerns are concurred with and warrant the refusal of the application.

- View loss

Comment:

As detailed under the WDCP cl. D7 Views section of this report, the new dwelling will cause a devastating loss of iconic views to No. 51A Wheeler Parade. The application is recommended for refusal on this basis given the unreasonable planning design of the dwelling and number of planning non-compliances, including maximum height standard, wall height, building envelope and non-support for the Applicant's written 4.6 Exceptions to development standards.

The raised concerns are concurred with and warrant the refusal of the application.

- Loss of re-sale house value

Comment:

This is not a relevant planning matter for assessment.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	No objections are raised to the proposed development, subject to Recommended conditions.
Parks, reserves, beaches, foreshore	No issues with the proposal.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment,

many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

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. A352206 dated 16 September 2019). Should the application be approved, a condition will be 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?	No

zone objectives of the LEP?	No
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Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	up to 10.6m	24.7% (2.1m)	No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No

Detailed Assessment

Zone R2 Low Density Residential

The underlying objectives of the R2 Low Density Residential zone are not all achieved, as follows:

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

Comment:

The dwelling house will provide for housing 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:

Other land uses, such as commercial or business areas, will support the dwelling.

It is considered that the development will satisfy 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 proposed development does not provide adequate landscaped settings that are in harmony with the natural environment of Warringah, particularly as the subject site adjoins Wingala Reserve.

It is considered that the development does not satisfy this objective.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.6m
Percentage variation to requirement:	24.7% (2.1m)

Assessment of request to vary a development standard:

The following assessment of the variation to cl. 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) does not demonstrate that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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 height encroachment primarily occurs over the southern three quarters of the proposed Level 1 Living Room and roof over a part of the adjoining balcony, where these facilities are located above the entry, hallway, bathroom, study and garage located on the lower ground floor.....

The existing dwelling also encroaches on the 8.5m maximum building height control along the southern side at the rear, where the roof extends up to 1000mm above the 8.5 maximum building height control. The proposed development lowers the roof at the rear so that the height exceedance in this portion of the dwelling is reduced to around 500mm.

The proposed building form and height is generally consistent with the existing dwelling on the site and existing contemporary dwellings in the locality. The proposal achieves the objectives of the building height control and the objectives of the R2 Low Density Residential Zone, notwithstanding the numerical height non-compliance arising from the excavated ground level and slope of the land.

The development, in the form proposed, provides for an appropriate building typology and density, with no material environmental impacts and is consistent with the objects of the EP&A Act. Requiring compliance is unreasonable and unnecessary in this case, as it would not result in any material benefit and in relation to architecture, urban design or amenity.

Requiring strict numerical compliance would create a less desirable planning outcome. Retention of existing building form and height for the rear portion of the building and lowering of the Level 1 extension by adopting a different roof from and lower floor to ceiling height clearances would compromise the architecture of the building and materially reduce occupant amenity.

Some flexibility with respect to the application of the building height control on sloping excavated sites is appropriate. Flexible application of the building height control development standard allows an improved architectural outcome that contributes positively to the character of the locality, with no material impact on neighbour amenity or the environment. The requested variation to the 8.5m maximum building height standard is appropriate and worthy of support."

The written request also provides that the height of the development will "not materially increase disruption of views, privacy or solar access to neighbouring properties".

Comment:

The description of the area of non-compliance is supported.

However, the applicants written request to vary the maximum building height standard is not supported for the following reasons;

1. The development is for a new dwelling house and not alterations and additions;
2. The height of the dwelling is not compatible with the predominant maximum height of dwelling houses within the locality;
3. Unacceptable adverse neighbour impacts generated from the height of the new dwelling;
4. Inconsistent with the Objectives of the R2 Low Density Residential zone and WLEP 2011 cl. 4.3

Height of Building;

5. Inconsistent with Environmental Planning and Assessment Act 1979 - Section 4.15; and

6. Adverse impacts on neighbouring properties can be substantially minimised with a more complying, skilful and flexible development.

1. The development is for a new dwelling house and not alterations and additions

Comment:

Consistent with *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187, the application is not regarded as alterations and additions to a dwelling house, but rather, a new dwelling house (structure). This matter is not discussed by the applicant in the written request. Instead, justification for the proposed development, non-compliances and related adverse neighbour impacts are based on the difference between the existing dwelling house and resultant dwelling house. In both cases, the development cannot be supported.

As per the planning principal, the development is effectively demolishing the ground and first floor levels and rebuilding two (2) new storeys above the retained lower ground floor level. Therefore, there is limited relationship of the existing dwelling to that proposed. Further details of the planning principal assessment is provided in the Proposed Development Details section of this report.

2. Adverse neighbour impacts generated from the height of the new dwelling

Comment:

The written request does not provide any supportable facts to establish that the proposed 10.6m maximum building height is consistent with other existing dwellings in the immediate or surrounding streets. Further, the written request does not acknowledge that the height of the proposed new dwelling house will generate the following planning non-compliances;

- a) WDCP cl. D2 Private Open Space
- b) WDCP cl. D6 Access to Sunlight
- c) WDCP cl. D7 Views
- d) WDCP cl. D8 Privacy

These non-compliances are included in Recommendation as reasons for refusal of the application and are in part a consequence of the height of the new dwelling.

3. Not consistent with the Objectives of the R2 Low Density Residential Zone and WLEP 2011 cl. 4.3 Height of Building

Comment:

The development is inconsistent with the Objectives of the R2 Low Density Residential Zone and WLEP 2011 cl. 4.3 Height of Building (detailed further below).

Zone R2 Low Density Residential

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

Comment:

The proposal is for a new dwelling house and WDCP cl. D1 Landscaped Open control requires 50% landscaped open space. Only 22.1% (196m²) landscaped open space is provided on-site. Proposed landscaping is not in harmony with the natural environment.

WLEP 2011 cl. 4.3 Height of Building

(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

Comment:

The written request provides that the height of the proposed roof (RL) is similar to the height of the roof of the neighbouring dwelling to the north, being No. 51A Wheeler Parade. No other evidence is provided that the new dwelling house is compatible with the height and scale of surrounding and nearby development.

The written request does not conclude that the height of the roof will generate unreasonable and unacceptable amenity impacts on adjoining properties, including loss of iconic views, loss of privacy and overshadowing.

4. Inconsistent with Environmental Planning and Assessment Act 1979 - Section 4.15

Comment:

Contrary to the written request, the development is not consistent with the Environmental Planning and Assessment Act 1979 - Section 4.15 Matters for Consideration. This particularly includes the adverse neighbour amenity impacts from the height and that the development is not in the public interest.

5. Adverse impacts on neighbouring properties can be minimised with a more complying, skilful and flexible development

Comment:

The applicant's written request provides that "*Requiring strict numerical compliance would create a less desirable planning outcome*". Evidence supporting this statement is not convincing, particularly as the proposal constitutes new development and not alterations and additions. Compliance with numerical compliance is therefore strongly required.

The written request highlights that the roof exceeds the 8.5m standard due to the natural fall of the land beneath the house. However, the proposed new dwelling will provide a new roof form with a height that exceeds the 8.5m height standard on both the eastern and western side of the natural fall beneath the existing dwelling. This is contrary to providing a complying, skilful and flexible development, particularly given adverse neighbour impacts generated from the roof.

The excessive height of the roof generates unreasonable and unacceptable amenity impacts on adjoining properties, including loss of iconic views, loss of privacy and overshadowing. However, the same roof height, in conjunction with other WDCP planning non-compliances, will readily maximise the residential amenity of the resultant new dwelling, including view corridors, visual outlook and outdoor and indoor private space areas.

The written request does not acknowledge that adverse impacts on neighbouring properties can be minimised with a more complying, skilful and flexible development.

The existing three (3) storey dwelling house is located within the far western corner of the site. Similar to the new dwelling house proposed, the existing dwelling house contains many non-compliances with planning controls, including building height, wall height, building envelope, rear setback and landscaped open space. However, these non-compliances were deemed reasonable as the areas of non-compliance are located to the western side of the site and therefore do not generate unacceptable neighbour impacts, including view loss, loss of privacy and overshadowing.

Contrary to the design of the existing dwelling house, the new dwelling house will extend the non-complying roof element to the east, and in conjunction with the ground floor level master bedroom. These building sections will generate iconic view loss to No. 51A Wheeler Heights Parade and unreasonable overshadowing and overlooking of the private open space area at No. 94 Headland Road. This point is not accounted for within the applicants written request nor does it demonstrate that subtle and achievable design changes, as described above, would minimise maximum height non-compliances and provide a more skilful and flexible new development in terms of building height without iconic view loss to No. 51A Wheeler Heights Parade and unreasonable overshadowing and overlooking of the private open space area at No. 94 Headland Road.

Conclusion

Therefore, the applicant's written request does not adequately demonstrate 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).

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

CLAUSE 4.3 - HEIGHT OF BUILDINGS

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 scale of development within the immediate and surrounding streets are typically two (2) and three (3) storey high dwelling houses within landscaped settings. It is noted that some apartment buildings are located to the north and north-east of the subject site and on the lower side of the hill, towards Dee Why local commercial centre. Similarly, this is also the case on the southern side from the subject site with apartment buildings being located on the lower side of the hill, towards Curl Curl Beach.

WLEP 2011 provides that the maximum height standard for a dwelling house is 8.5m. A search of Council records has found that the maximum height of adjoining development is as follows:

- a) No. 86 Headland Road: 9.1m
- b) No. 88 Headland Road: 7.4m
- c) No. 51A Wheeler Parade: 8.5m

The predominant height of dwellings within the locality is considered less than 8.5m. The maximum height of the proposed dwelling is 10.6m. This provides a significant variation to the height standard by 24.7% (2.1m).

Based on the above, the height of the dwelling is excessive and not compatible with that of the locality.

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

Comment:

The proposed new dwelling, including the roof, generates unacceptable visual impact, disruption of views, loss of privacy and loss of solar access on adjoining properties. The application is recommended for refusal on this basis and is further discussed in detail under the following planning controls:

- a) WDCP cl. D2 Private Open Space
- b) WDCP cl. D6 Access to Sunlight
- c) WDCP cl. D7 Views
- d) WDCP cl. D8 Privacy

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

Comment:

The proposed development does not improve its scenic quality of Warringah's coastal and bush environments, particularly as the subject site adjoins Wingala Reserve.

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 new dwelling and roof located above exhibit a substantial rear building line non-compliance which will provide an unsatisfactory impact when viewed by the public from Wingala Reserve.

Zone objectives

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

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

Comment:

The proposed development will contribute to the housing needs within a low density residential environment and is compatible with that of the other land uses within the R2 Low Density Residential environments.

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

Comment:

The proposed development will continue to enable other land uses that provide facilities of services to meet the day to day needs of the residents.

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

Comment:

The proposed development does not provide adequate landscaped settings that are in harmony with the natural environment of Warringah, particularly as the subject site adjoins Wingala Reserve.

Conclusion:

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

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, 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 to determine applications with variations to the Height of Buildings development standard associated with a single dwelling house (Class 1 building).

Warringah Development Control Plan

Built Form Controls

Built Form Control (site area 885.2m ²)	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	up to 10.3m	43.1% (3.1m)	No
B3 Side Boundary Envelope	5m (south)	outside envelope	26% (1.3m) 6% (0.3m)	No No
	5m (north)	within envelope	N/A	Yes

B5 Side Boundary Setbacks	0.9m (south)	lower ground floor: 1.335m ground floor: 1.8m level 1: 4.164m	N/A N/A N/A	Yes Yes Yes
	0.9m (north)	lower ground floor: 1.885m ground floor: 1.885m to 2.855m level 1: 2.865m to 7.37m	N/A N/A N/A	Yes Yes Yes
	0.9m (east)	10.2m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	33.6m	N/A	Yes
B9 Rear Boundary Setbacks	6m	lower ground floor: 1.76m to 1.77m ground floor: 1.76m to 2.83m level 1: 1.76m	up to 70.7% (4.24m) up to 70.7% (4.24m) 70.7% (4.24m)	No No No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (354.1m ²)	22.1% (196m ²)	44.6% (158.1m)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	No	No
B1 Wall Heights	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	N/A	N/A
B9 Rear Boundary Setbacks	No	No
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	No
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	No
D7 Views	No	No
D8 Privacy	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

The proposal, defined as a new dwelling house, is not consistent with the Objectives of the Warringah Development Control Plan (WDCP).

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

- To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood .

Comment:

Excavation works to the site are limited. The existing lower ground floor level will be retained by the proposal. The upper two (2) storeys will be deleted and replaced with two (2) new floor levels.

The 10.6m height of the development substantially exceeds the WLEP 2011 8.5m standard and represents a 24.7% variation to the control. The predominant height of dwellings within the locality is 8.5m or less. Therefore, the height of the dwelling is excessive and not compatible with that of the locality.

Non-compliances of the development are as follows:

- WLEP 2011 cl. 4.3 Height of buildings
- WDCP cl. B1 Wall height
- WDCP cl. B3 Side boundary envelope
- WDCP cl. B9 Rear Boundary Setbacks
- WDCP cl. D1 Landscaped Open Space and Bushland Setting
- WDCP cl. D2 Private Open Space

- g) WDCP cl. D6 Access to Sunlight
- h) WDCP cl. D7 - Views
- i) WDCP cl. D8 Privacy

Assessment of the non-compliances is provided in detail in the report under each specific planning control. The non-compliances also generate unacceptable and unreasonable neighbour impacts, including visual impact, loss of iconic views, loss of privacy, overshadowing and loss of use of private open space areas.

Having regard to the number of non-compliances and related adverse neighbour impacts, the development does not respond satisfactorily to the characteristics of the site and the qualities of the surrounding neighbourhood.

- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome.*

Comment:

Of relevance, the building bulk and size of the new dwelling and low ratio of landscaping to built form creates an abrupt change compared to neighbouring residential development. As detailed above, the proposal has not properly addressed the built form controls in a manner.

Therefore, the development is not a good neighbour.

- *To inspire design innovation for residential, commercial and industrial development.*

Comment:

Contrary to the design of the existing dwelling house, the new dwelling house will extend both the ground and first floor level to the east and generate adverse neighbour impacts, including iconic view loss to No. 51A Wheeler Heights Parade and unreasonable overshadowing and overlooking of the private open space area at No. 94 Headland Road. A more inspired design would retain the works to the west, like the existing dwelling house, and substantially minimise adverse neighbour impacts.

Therefore, the proposal does not exhibit design innovation to an acceptable degree.

- *To provide a high level of access to and within development.*

Comment:

The proposal demonstrates adequate access to the front of the development from the street.

- *To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained.*

Comment:

The site is not within an "environmentally sensitive area" under WLEP 2011. Additionally, the land is not identified as having intrinsic scenic and visual qualities in the area and the site is not situated on a prominent hillside or ridgetop. The site does not contain any significant biological or ecological values such as remnant natural bushland or habitat.

- *To achieve environmentally, economically and socially sustainable development for the community of Warringah.*

Comment:

The proposal raises issues in relation to the lack of a suitable landscape setting for the development. There are no issues in relation to economically and socially sustainable development.

B1 Wall Heights

Description of non-compliance

The proposal, being defined as a new dwelling house, will have a maximum wall height of 10.3m.

The control requires a maximum of 7.2m. This represents a variation of 43.1% (3.1m).

Merit consideration:

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

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

Comment:

The wall height of the first floor level exceeds the control.

This non-compliant wall height contributes and overall building mass will cause unreasonable visual impact when viewed from adjoining properties on the north and south, being No. 51A Wheeler Parade and No. 94 Headland Road.

The development does not meet this objective.

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

Comment:

No existing tree canopy level exists.

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

Comment:

This matter is discussed in the report under WDCP cl. D7 Views. In summary, the wall height of the proposed new dwelling will cause view loss to the residents of No. 51A Wheeler Parade.

The development does not meet this objective.

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

Comment:

As discussed throughout this report, the development will result in unreasonable impacts on the adjoining properties 51A Wheeler Parade and No. 94 Headland Road, including privacy, loss of solar access, iconic view loss and loss of use of private open space.

The non-compliance with the wall height will substantially contribute to these impacts.

The development does not meet this objective.

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

Comment:

The development, being a new dwelling, does not demonstrate skilful design and the development does not respond to site topography. The proposal does not comply with the following planning controls:

- a) WLEP 2011 - cl. 4.3 Height of buildings
- b) WDCP - cl. A.5 Objectives
- c) WDCP - cl. B3 Side Boundary Envelope
- d) WDCP - cl. B9 Rear Boundary Setbacks
- e) WDCP - cl. D1 Landscaped Open Space and Bushland Setting
- f) WDCP - cl. D2 Private Open Space
- g) WDCP - cl. D6 Access to Sunlight
- h) WDCP - cl. D7 Views
- i) WDCP - cl. D8 Privacy

Excavation is not carried out for the development as the lower ground floor level is retained.

The development does not meet this objective.

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

Comment:

The design of the first floor level is deemed unsatisfactory. The proposed first floor level should not extend eastwards, past that where the existing first floor level ends. This would substantially minimise adverse neighbour impacts. An amended roof design to this effect can be achieved readily.

The development does not meet this objective.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

The proposed development, being the ground floor and first floor level of the new dwelling, encroaches the southern side boundary envelope of 5m and 45 degrees.

First floor level: Up to 1.3m of the side elevation is located outside of the projected building envelope. This represents a variation of 26%.

Ground floor level: Up to 0.3m of the side elevation is located outside of the projected building envelope. This represents a variation of 6%.

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 new development substantially exceeds the 8.5m maximum height standard, and in conjunction with the substantial wall height non-compliance, the height and bulk and scale of the built form cannot be satisfactorily minimised to reduce neighbour impacts, including unacceptable visual outlook impacts on the residents of from the private open space area located at No. 94 Headland Road.

Therefore, the proposal is inconsistent with this objective.

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

Comment:

Adequate spatial separation to adjoining dwelling houses and boundaries is not provided. In particular, the non-complying elements directly cause adverse neighbour impacts on the adjoining property to the south, being No. 94 Headland Road. The impacts include unacceptable loss of solar access within the rear private open space, inability to develop the rear yard, loss of solar access and privacy.

The proposed development also results in adverse privacy impacts on the southern side by virtue of the inadequate spatial separation between buildings which include a 1.8m side setback to the ground floor level and 4.164m side setback to level 1.

Also, the floor to ceiling height of the elevations are glass. Submitted plans show that privacy screens and landscaping will be used to minimise privacy between properties. The privacy screens and landscaping are not integrated components of the design. Landscaping is proposed under the ground floor level with a 1.0m side setback. The proposed landscaping, being Blueberry Ash, is not expected to grow to a height of 6.0m to 8.0m as it would be prevented to by the width of the planting area and canopy constrained under the built form.

Therefore, the proposal is inconsistent with this objective.

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

Comment:

The proposal does not incorporate design solutions that respond to the sites topography. Bulk and scale of the development are not minimised satisfactorily. The proposal seeks to maximise the size and extent of the proposed new dwelling and increase amenity impacts, including available views and visual outlook. These factors do not acknowledge the significant visual impact of the development on No. 94 Headland Road.

Therefore, the proposal is inconsistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposal, being a new dwelling house with landscaping, has the following rear boundary setbacks which do not comply with the 6.0m minimum requirement of the control:

- a) lower ground floor: 1.76m to 1.77m
- b) ground floor: 1.76m to 2.83m
- c) level 1: 1.76m

This represents a variation of 70.7%.

A variation to the control is not supported for reasons provided below and the development is recommended for refusal on this basis.

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 opportunities for deep soil landscape areas are maintained.*

Comment:

The new development comprises a total of 22.1% (196m²) landscaped open space (LOS). This provides a non-compliance of 44.6% with the minimum 40% requirement of the LOS control. As such, on-site landscaping is numerically deficient and the proposed development does not provide satisfactory deep soil landscape areas.

Therefore, the proposal is inconsistent with this objective.

- *To create a sense of openness in rear yards.*

Comment:

Given the narrow rear setback area, no sense of openness is maintained within the rear yard.

Therefore, the proposal is inconsistent with this objective.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The redevelopment of the site for a new dwelling house will intensify the use of the rear setback area, particularly as this area comprises living rooms. Further, the height of the first floor area within the rear setback area exceeds the 8.5m maximum building height requirement of WLEP 2011. This part of the dwelling will enable overshadowing and overlooking of the rear private open space at No. 94 Wheeler Parade. Intervening landscaping and side boundary setbacks will not satisfactorily protect this neighbour from such adverse impacts.

Therefore, the proposal is inconsistent with this objective.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The rear setback of the new development, as well as the existing dwelling, is not consistent with the predominant continuity and pattern of building, rear gardens and landscaping. The proposed new dwelling seeks to substantially extend the first floor and ground floor level from rear western portion of the dwelling substantially to the east. As such, the new dwelling will extend the dwelling from east to west, and in turn, increase areas of planning non-compliance, as highlighted in this report, and residential amenity, including views and visual outlook.

In conjunction with the above, the rear setback non-compliance if maintained to that of the existing situation would minimise adverse neighbour impacts, including privacy, solar access and view loss.

Therefore, the proposal is inconsistent with this objective.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

Opportunities to minimise privacy impacts to a satisfactory level are avoided by the proposed new dwelling.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal provides 22.1% (196m²) of landscaped open space (LOS) which does not comply with the minimum of 40% requirement.

This represents a variation of 44.6% (158.1m).

Merit consideration

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

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

Comment:

The site is battle-axe in shape and landscaping is not possible within the driveway.

The development satisfies this objective.

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

Comment:

The proposed landscape area is substantially less than the 40% minimum requirement and will not sufficiently conserve or enhance indigenous vegetation or habitat for wildlife.

Therefore, the development does not meet 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:

Proposed landscaping and the areas planted within will not reasonably screen the dwelling house.

The development does not meet this objective.

- *To enhance privacy between buildings.*

Comment:

Overall, the proposal does not provide sufficient landscaped open space to enhance privacy between buildings and does not meet this objective.

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

Comment:

A grass lawn area and swimming pool will continue to provide sufficient outdoor recreational opportunities for the needs of the occupants.

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

Comment:

Sufficient space for service functions is provided.

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

Comment:

The stormwater design was reviewed by Council's Development Engineers who do not raise concerns relating to stormwater.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D2 Private Open Space

Description of non-compliance

Adverse neighbour impacts generated from the proposed first floor level outdoor living area on the private open space area located at 94 Headland Road, including loss of privacy, overshadowing and loss of ability to use the 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 ensure that all residential development is provided with functional, well located areas of private open space.*

Comment:

Private open space provided on the ground floor level is well located. However, the level 1 outdoor living area, in conjunction with adjoining internal living rooms and the ground floor level master bedroom, will enable adverse neighbour impacts on the private open space located at No. 94 Headland Road, including loss of privacy, overshadowing, loss of ability to use or future develop the area and visual outlook impact.

Therefore, the development does not meet this objective.

- *To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.*

Comment:

Access to the outdoor living area is provided from the ground floor level bedroom area. Access to the level 1 outdoor level area is provided from the internal living room. Overall, access to private open space areas is readily and conveniently available.

Therefore, the proposal satisfies this objective.

- *To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.*

Comment:

As detailed above, the level 1 outdoor living area, in conjunction with adjoining internal living rooms and the ground floor level master bedroom, will enable adverse neighbour impacts on the private open space located at No. 94 Headland Road, including loss of privacy, overshadowing, loss of ability to use or future develop the area and visual outlook impact.

Therefore, the development does not meet this objective.

- *To ensure that private open space receives sufficient solar access and privacy.*

Comment:

The private open space receives sufficient solar access and privacy.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D6 Access to Sunlight

The control requires at least 50% of the required area of private open space (POS) of adjoining dwellings to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

The proposal, being a new dwelling house, will generate an unacceptable and unreasonable amount of overshadowing on the POS area located at No. 94 Headland Road.

Submitted shadow diagrams (plan form) are not consistent with the submitted elevation shadow diagrams, particularly between the hours of 9am to 12pm on June 21st. During this time, plan shadow diagrams show that the private open space area (POS) located at No. 94 Headland Road is completely overshadowed. However, the same area is not shown to be completely overshadowed by the elevation shadow diagrams.

Having carried out a site inspection, review of submitted shadow diagrams and the survey and submitted plan, it is concluded that the POS area located at No. 94 Headland Road would only be partially overshadowed by the existing subject dwelling house between the hours of 9am and 11am on June 21. Following 11am on June 21, the POS area is completely overshadowed by the existing dwelling.

The proposed ground floor level master bedroom will increase the amount of overshadowing detailed above. Specifically, more than 50% of the POS area will be overshadowed from 9.30am on June 21.

This increase in overshadowing forms a reason for refusal of the application.

Having regard to the above, details of the non-compliance are provided below.

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:

The proposal will create a significant change to the existing sunlight enjoyed by No.94 Headland Road due to the ground floor level master bedroom and elevated height of the first floor level and associated roof. It is the extension of the built form, from the east to the west that generates additional overshadowing, particularly from the master bedroom. This part of the new dwelling will cause overshadowing of the POS area located at No. 94 Headland Road between 9.30am and 11am on June 21.

The impact is found to be unacceptable, and therefore, the development does not meet this objective.

- *To encourage innovative design solutions to improve the urban environment and public open space.*

Comment:

The non-compliance to the building height, wall height, building envelope are deliberate design choices to capitalise on potential coastal and land views. The elongated building footprint combined with the elevated design does not improve solar amenity to adjacent land, but in fact, it removes any remaining solar access to the POS area of No. 94 Headland Road.

Therefore, the development does not meet this objective.

- *To promote passive solar design and the use of solar energy.*

Comment:

The new dwelling will exhibit acceptable passive solar design.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D7 Views

A site inspection of the subject site and surrounding properties revealed that the development would affect view sharing to the adjoining neighbour to the north, being No. 51A Wheeler Parade. Also, concern was

raised in a submission from the adjoining neighbour at No. 51A Wheeler Heights Parade that the development will cause view loss.

The Applicant was requested to provide height poles to represent the development. Four (4) height poles were erected to represent level one which specifically included part of the proposed roof which extends over the eastern portion of the proposed kitchen and living room.

Height poles were not erected to represent the roof line extension over the level one outdoor living area or the ground floor level master bedroom which extends to the east of the existing dwelling.

Following the height poles being erected, a site inspection was carried out at No. 51A Wheeler Parade to assist in assessing view sharing. A further view loss site inspection was carried out of the same property, however, the height poles had been pulled down.

In conclusion, the development has been assessed as having an unacceptable and unreasonable impact on the available views of the property. Therefore, the concerns raised in relation to view loss are concurred with and warrant the refusal of the application.

In reaching this conclusion, the four steps used in the views principle outlined within the Land and Environment Court Case *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140, were used. The four steps of assessment are provided as follows:

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:

Ground floor level study room south facing window

Magnificent panoramic standing views of Curl Curl, Curl Curl lagoon, Freshwater and North Head water/land interface views are available in addition to surrounding ocean waters. These views also include associated views of suburbs, including the Gap lighthouse and Bondi Junction. These views are considered iconic.

The location of the proposed ground floor level master bedroom will remove the available standing views detailed above. Partial western views of the ocean will remain.

Ground floor level study room east facing window

Standing views include north Curl Curl water/land interface, wave action area and partial view of

the headland and lagoon. Views of the far northern portion of North Head are also available. These views are moderately to highly valued and will be substantially retained.

First floor level bedroom with study east facing window

Sitting and standing views of Curl Curl residential area with ocean views behind to the east. Standing and sitting near the window, ocean/land interface views of Long Reef to North Head are available. These views are moderately valued and will be retained.

First floor level bedroom with study south facing window

Magnificent panoramic sitting and standing views of Curl Curl, Curl Curl lagoon, Freshwater and North Head water/land interface views are available in addition to surrounding ocean waters. These views also include associated suburbs, including the Gap lighthouse, Bondi Junction and the city. These views are considered iconic.

The proposed ground floor level master bedroom will remove a substantial portion of the north Freshwater Headland, being where "Harbord Diggers" is located. Further, views of the residential area of north Curl Curl Beach and a majority of south Curl Curl Beach, parklands and lagoon will be removed by the development.

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:

As detailed in Principle 1 above, the affected views are as follows:

- a) Ground floor level study room south facing window: standing view across the southern side boundary; and
- b) First floor level bedroom with study south facing window: sitting and standing view across the southern side boundary.

The available views to be protected are across the side boundary. In front (east) of the property is Curl Curl residential area located on an escarpment. Partial views of water are available over the escarpment. However, the more high valued views of Long Reef and North Head are available over side boundaries. This scenario is consistent with adjoining development, including No. 45, 47, 49, 51, 55 & 53 Wheeler Parade.

Having regard to the above, this principle conveys that protection of side boundary views is difficult. The test of "difficulty" relates directly to the skilful design and planning control compliance of the development.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is

20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:

The rooms experiencing view loss are referenced as being a study and bedroom. Development Consent DA2009/1439 for a two story dwelling house with a swimming pool at No. 51A Wheeler Parade was granted by Warringah Council on 8 February 2010. These rooms are identified on approved plans as being a guest/study room and a bedroom. In this regard, these two rooms are being used as per the Development Consent.

Following a site inspection and consultation with the home owner, the study room is a highly used area. In this regard, the available standing views are significant and valued as iconic. The extent of the impact on the iconic view is deemed devastating.

The use of the bedroom with study is identified as being less used than living rooms. However, the room use would be increased by use of the study area. The extent of the impact on the iconic view is deemed severe.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

Principle 2 informs that it is difficult to protect views available over the southern side boundary. However, as previously stated, No. 51A Wheeler Parade and adjoining properties are available to highly valued views taken over side boundaries.

The subject rooms relate to a highly used study room and moderately used bedroom study area. The available views from these rooms are identified as being iconic.

Having regard to the above, the test of "difficulty" to protect available views relates directly to the reasonableness of the proposed development, particularly in terms of skilful design and compliance with planning controls.

Consistent with *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187, the application is not regarded as alterations and additions to a dwelling house, but rather, a new dwelling. Details of this assessment is provided in the Proposed Development Details section of the report.

In summary, development is effectively demolishing the ground and first floor levels and rebuilding two (2) new storeys above the retained lower ground floor level. There is limited relationship of the existing building to that proposed, particularly in terms of the appearance of the new floor levels, the use of the floor levels, building height, rear setbacks and building envelope.

The new development also generates the following non-compliances:

- a) WLEP 2011 cl. 4.3 Height of buildings (10.6m)
- b) WDCP cl. B1 Wall height
- c) WDCP cl. B3 Side boundary envelope
- d) WDCP cl. B9 Rear Boundary Setbacks
- e) WDCP cl. D1 Landscaped Open Space and Bushland Setting
- f) WDCP cl. D2 Private Open Space
- g) WDCP cl. D6 Access to Sunlight
- h) WDCP cl. D8 Privacy

Assessment of the non-compliances is provided in detail in the report under each specific planning control. The devastating and severe view loss experienced is a direct consequence of the new development which does not comply with the 8.5m maximum building height requirement, wall height and projected building envelope. These non-complying building elements also generate unreasonable and unacceptable neighbour impacts, including the following;

No. 94 Headland Road

- a) Loss of solar access and privacy to the rear private open space
- b) Inability to use private open space due to overlooking from new development
- c) Visual outlook impact from the private open space of the master bedroom
- c) Severe and unnecessary design constraints on new development

No. 51A Wheeler Parade

- a) Privacy impacts

The new development provides substantial non-compliances with planning controls which maximise their residential amenity, including view corridors over the southern boundary. However, the non-complying elements of the development, including the excessive height of the roof, generates unreasonable and unacceptable amenity impacts on adjoining properties, including loss of iconic views, overshadowing and privacy.

With respect to view sharing and substantial number of planning non-compliances, a more skilful design can readily be provided to substantially reduce the impact on the iconic view of the neighbour. For example, the existing three (3) storey dwelling house is located within the far western corner of the site. It contains many non-compliances with planning controls, including a building height in excess of 8.5m and non-compliance with the wall height, building envelope, rear setback and landscaped open space. However, these non-compliances are deemed reasonable as the areas of non-compliance do not generate unacceptable neighbour impacts, including view loss, loss of privacy and overshadowing.

In this regard, the view impact of the new development is not acceptable and the view sharing unreasonable.

View sharing is not achieved by the new development and therefore should be refused on this basis.

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

Comment:

The proposed master bedroom should be deleted as it generates unacceptable privacy and iconic view loss and visual outlook impacts on No. 94 Headland Road and No. 51A Wheeler

Parade.

The first floor level of the new dwelling does not comply with the maximum building height, wall height, building envelope and rear setback. It also generates severe loss of iconic views. The first floor level area should be deleted to the extent of the first floor level of the existing dwelling. This would ensure view loss is kept at an acceptable and reasonable rate and similar to that of the existing situation.

The design of the new development is not innovative and therefore should be refused on this basis.

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

Comment:

Existing trees do not affect available views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D8 Privacy

The control requires that the dwelling layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.

The proposal, being a new dwelling house with north and south elevations comprising floor to ceiling glass windows, will generate unacceptable and unreasonable privacy impacts on the POS area located at No. 94 Headland Road and south elevation windows located on the dwelling at No. 51A Wheeler Parade.

Privacy impacts on other adjoining neighbours were assessed and found not to be unacceptable or unreasonable. This was due to the location and satisfactory distance of private open space areas and windows not being within available visual outlook lines, adequate spatial separation and intervening landscaping.

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:

Direct and close overlooking into the private open space area of No. 94 Headland Road can readily occur from the southern elevation windows of the proposed new dwelling, particularly from the ground floor master bedroom and first floor level living room and outdoor living room.

Direct and close overlooking into the level 2 office south elevation windows and level 3 bedroom/study and bathroom south elevation windows of the dwelling located at No.51A Wheeler Parade can readily occur from the northern elevation windows of the proposed new

dwelling, particularly from the ground floor master bedroom and first floor level living room and outdoor living room.

Intervening vegetation and the proposed privacy screen system are not expected to minimise or mitigate these privacy impacts.

Alternative design can readily be achieved to minimise privacy impacts and include construction of the new dwelling within the building footprint of the existing dwelling and western portion of the site.

The proposed development will result in unreasonable and unacceptable privacy impacts on No. 94 Headland Road and No. 51A Wheeler Parade.

The development does not meet this objective.

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

Comment:

The desire to fit a three storey dwelling house on-site with an elongated building footprint has come at the expense of an innovative design that will provide reasonable and acceptable visual privacy for the residents of neighbouring properties, being No. 94 Headland Road and No. 51A Wheeler Parade.

The development does not meet this objective.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposed development will provide reasonable personal and property security for occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

Planning Principle: The extent of demolition: alterations and additions or a new building

As established under *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187, to determine whether an application is regarded as alterations and additions or a new structure, it is appropriate to undertake a qualitative and a quantitative analysis of what is proposed compared to what is currently in existence.

The applicant has provided a submission in relation to this matter which concludes that the proposed development should constitute "alterations and additions". The submission has been considered and is not concurred with. The Applicants comments to the planning principle are provided below in conjunction with Council Planner comments.

In the facts of this development, it is qualitative and a quantitative assessment that the proposed development constitutes a new development and not alterations and additions to a dwelling house. Hence, development controls need to be considered and applied in this manner. In accordance with the planning principle established under *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187, the proposal constitutes new development against relevant qualitative and a quantitative questions for the following reasons;

1. How is the appearance of the existing building to be changed when view from public spaces?

Comment: The applicant advises the dwelling will remain three (3) storeys and is largely unseen from public spaces. However, the appearance of the existing dwelling is substantially different to that of the proposed new dwelling when viewed from Wingala Reserve Headland. Demolition works seek to remove the upper two storeys and replace these two storeys with floor to ceiling glass windows, a different roof form and height and different side setbacks.

2. What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?

Comment: The Applicant provides that demolition work is limited to the existing dwelling above the lower ground floor level ceiling slab and comprises demolition of all walls and floors above this slab and no other structures are proposed to be demolished. However, the curtilage of the existing dwelling is to be demolished, including the external walls of the ground floor level and level one. Hence, the replacement dwelling will not have the appearance of the existing dwelling house.

3. To what extent, will there be changes to the roof form?

Comment: The Applicant states that the existing series skillion style roof forms will be replaced with a single metal flat metal roof form. However, the changes to the roof form include deletion of the existing skillion metal roof and proposed new roof form being a much larger sized flat metal roof. The eastern end of this proposed roof form exceeds the WLEP 2011 8.5m building height requirement.

4. To what extent, if any, will the outlook from within the existing building be altered as a consequence of the proposed development?

Comment: The Applicant provides that privacy between neighbours maintained by privacy screen system. Outlook from the new ground floor level and level one, including the new master bedroom, will generate unacceptable view loss, privacy and solar impacts on adjoining residential properties.

5. Is the proposed demolition so extensive to cause that which remains to lose the characteristics for the form of the existing structure?

Comment: The Applicant provides that the extent of demolition will alter the characteristics of the existing dwelling but the built form will remain as a three (3) storey dwelling with bulk and scale not increased. However, the extent of demolition, including demolition of internal and external walls on the ground floor level and level one in conjunction with varying side setbacks and the construction of the master bedroom, will generate a dwelling with a substantial different appearance to that of the existing dwelling house and one of greater bulk and scale.

6. To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?

Comment: The Applicant states that the dwelling does not comply with the maximum building height and rear setback. However, the areas of non-compliance, including maximum building height (first floor level) and building envelope (master bedroom) does not comply with the WDCP building envelope

control. These non-compliances will generate unacceptable view loss, privacy and solar impacts on adjoining residential properties.

7. To what extent is the building envelope proposed to be changed?

Comment: The Applicant provides that the proposed change in the building envelope has been measured in reference to the existing building envelope and its change in floor area relative to its nearest boundary. However, the master bedroom does not comply with the WDCP building envelope control. This part of the dwelling will generate unacceptable privacy impacts on No. 94 Headland Road.

8. To what extent are boundary setbacks proposed to be changed?

Comment: The Applicant provides that all side setbacks of the new development have been increased to that of the existing dwelling. However, the increased side setbacks do not reduce or minimise adverse neighbour impacts, including view loss, overshadowing and loss of privacy.

9. To what extent, will there be changes to the roof form?

Comment: The Applicant states that the series skillion style roof forms to the existing dwelling has been replaced with a single metal flat metal roof form. However, the changes to the roof form will result in a larger flat metal roof form with the eastern portion of the roof located outside of the WLEP 2011 8.5m height requirement. This non-complying part of the roof will cause view loss to No. 51 Wheeler Parade.

Conclusion

In summary, the proposal demolishes the building with exception of the lower ground floor level. In this regard, there is limited relationship of the existing building to that proposed.

Therefore, this development application is not regarded as alterations and additions, but rather, a new dwelling.

CONCLUSION

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

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

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

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

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

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 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.

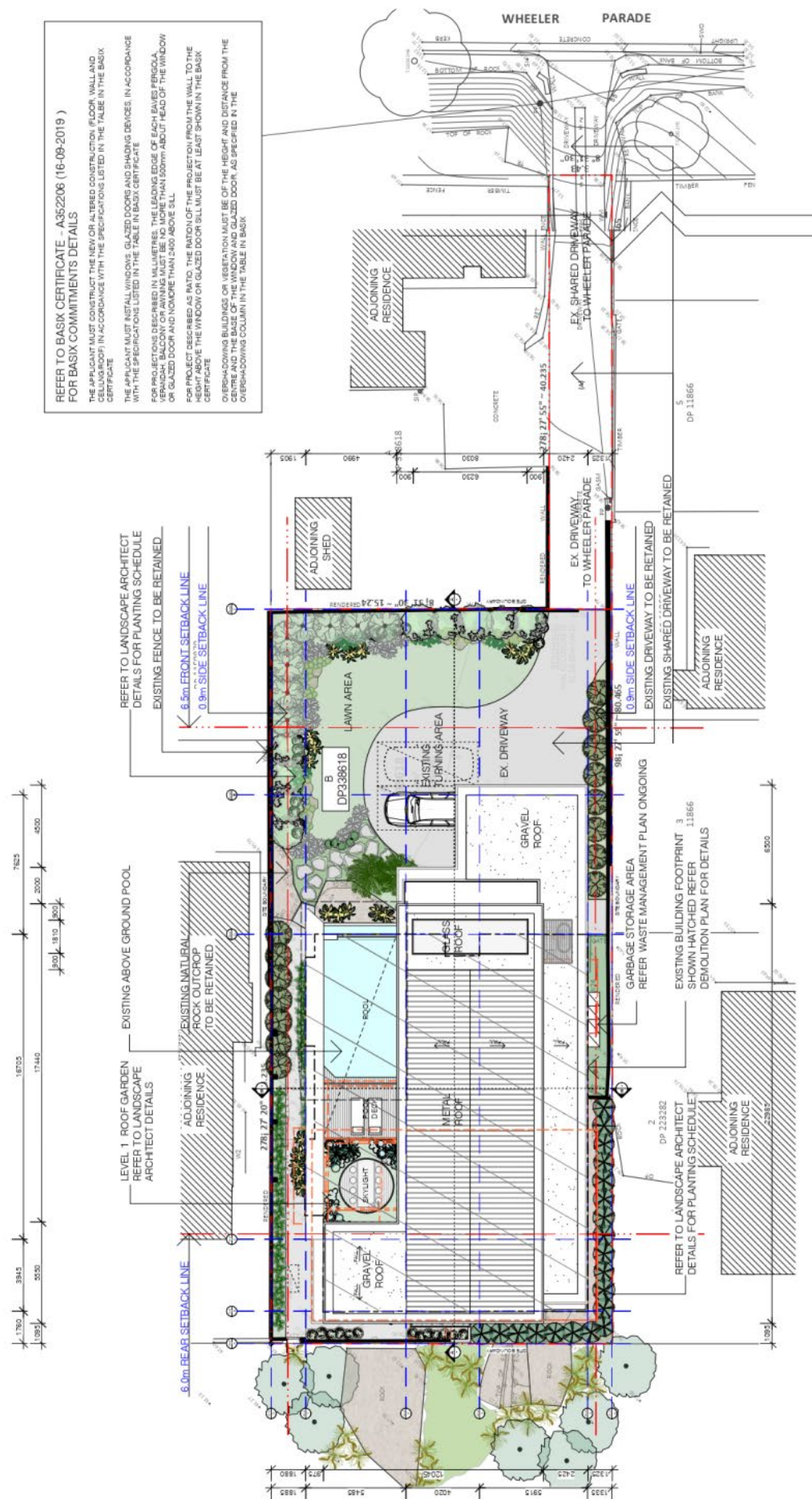
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/1175 for the Alterations and additions to a dwelling house on land at Lot B DP 338618,55 Wheeler Parade, DEE WHY, 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 Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. 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 R2 Low Density Residential of the Warringah Local Environmental Plan 2011.
3. 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 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of the Warringah Development Control Plan 2011.
5. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of Clause B1 Wall Heights of the Warringah Development Control Plan 2011.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3 Side Boundary Envelope of the Warringah Development Control Plan 2011.
7. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of Clause B9 Rear Boundary Setbacks of the Warringah Development Control Plan 2011.
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 D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan.
9. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part D2 - Private Open Space of the Warringah Development Control Plan 2011.
10. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the development is inconsistent with the provisions of Part D6 Access to Sunlight of the Warringah Development Control Plan 2011.

11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan.
12. 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 D8 Privacy of the Warringah Development Control Plan.



SITE/ROOF PLAN

ALTERATIONS & ADDITIONS - 55 WHEELER PARADE, DEE WHY

LEGEND	MATERIAL	MATERIAL
PP - PAINT	BRK - BRICK	PP - PAINT
ST - STEEL	CON - CONCRETE	ST - STEEL
TM - TIMBER	CPT - CEMENT	TM - TIMBER
STO - STONE	CR - CEMENT RENDER	STO - STONE
	PP - FIBRE CEMENT SHEET	
	GL - GLASS	
	LV - LOUVRES	
	MT - METAL ROOFING	
	MT - METAL ROOF	

LEGEND:

[illegible]

EXISTING	NEW	REMARKS
BRICK	BRICK	
STONE	STONE	

JOB TITLE	ALTERATIONS & ADDITIONS
SITE ID	55 WHEELER PARADE, DEE WHY
LOT	B
DP	338618
DATE	JANUARY 2019
SCALE	1:200 in A3

	EXCEED - 7.2M MAXIMUM H		EXCEED - 8.5M MAXIMUM B.H
	DEMOLISH CONCRETE		EXISTING BUILDING METAL S/S
	PAINT		PROPOSED BUILDING



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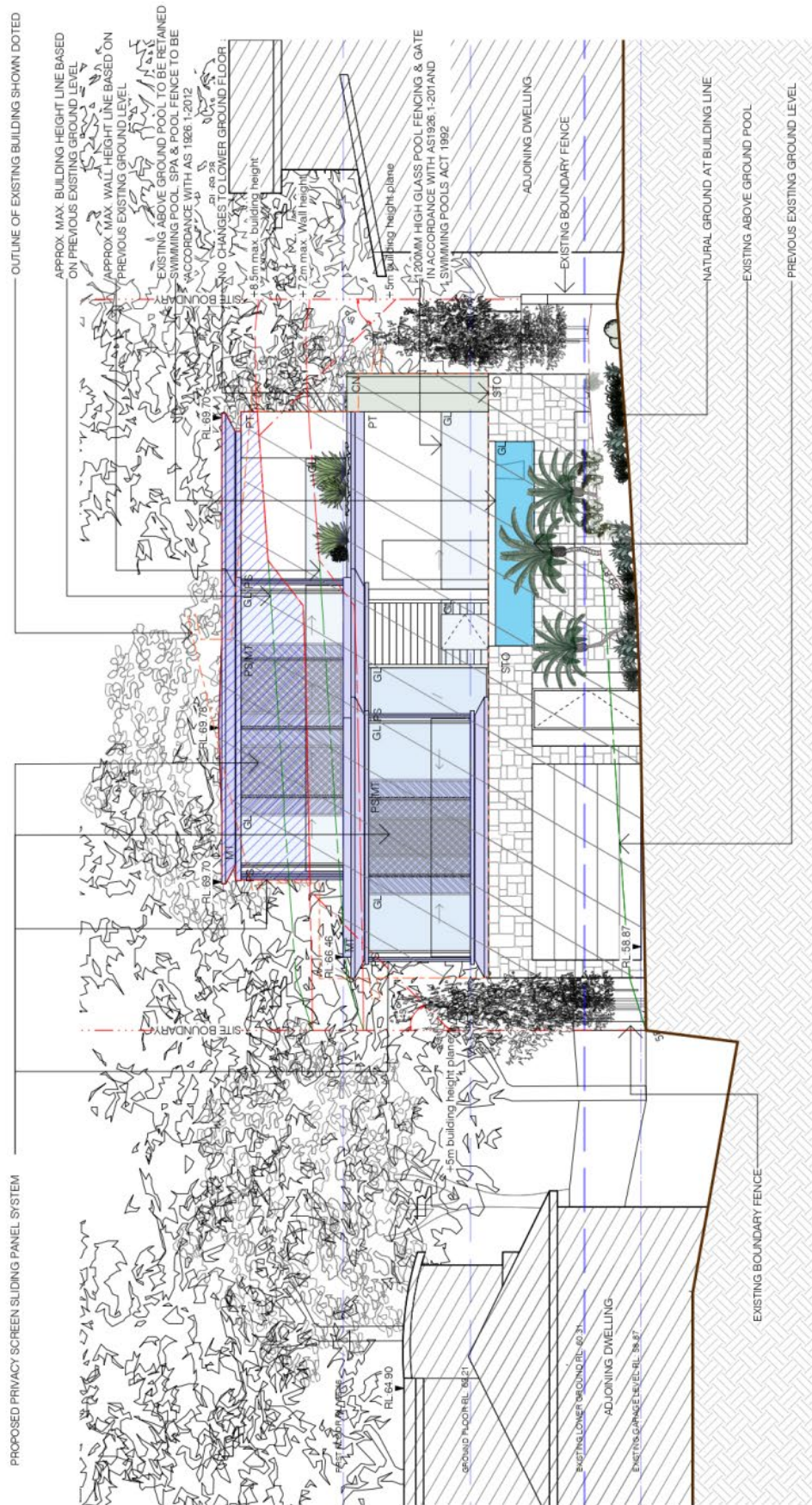


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DWG No

0328/DA 01/C

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 e - info@studiojla.com.au p - 02 9590 7190 f - 1111 m - studiojla.com.au



FRONT ELEVATION

ALTERATIONS & ADDITIONS - 55 WHEELER PARADE, DEE WHY

LEGEND:

TIMBER	GLASS	EXISTING	DEMOLISH	EXCEED - 7.2M MAXIMUM H	EXCEED - 8.5M MAXIMUM B.H
		BRICK	CONCRETE		
		STONE	PANT		

EXISTING BUILDING	EXISTING BUILDING	EXISTING BUILDING

EXISTING BUILDING	EXISTING BUILDING	EXISTING BUILDING

EXISTING BUILDING	EXISTING BUILDING	EXISTING BUILDING

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EXISTING BUILDING	EXISTING BUILDING	EXISTING BUILDING

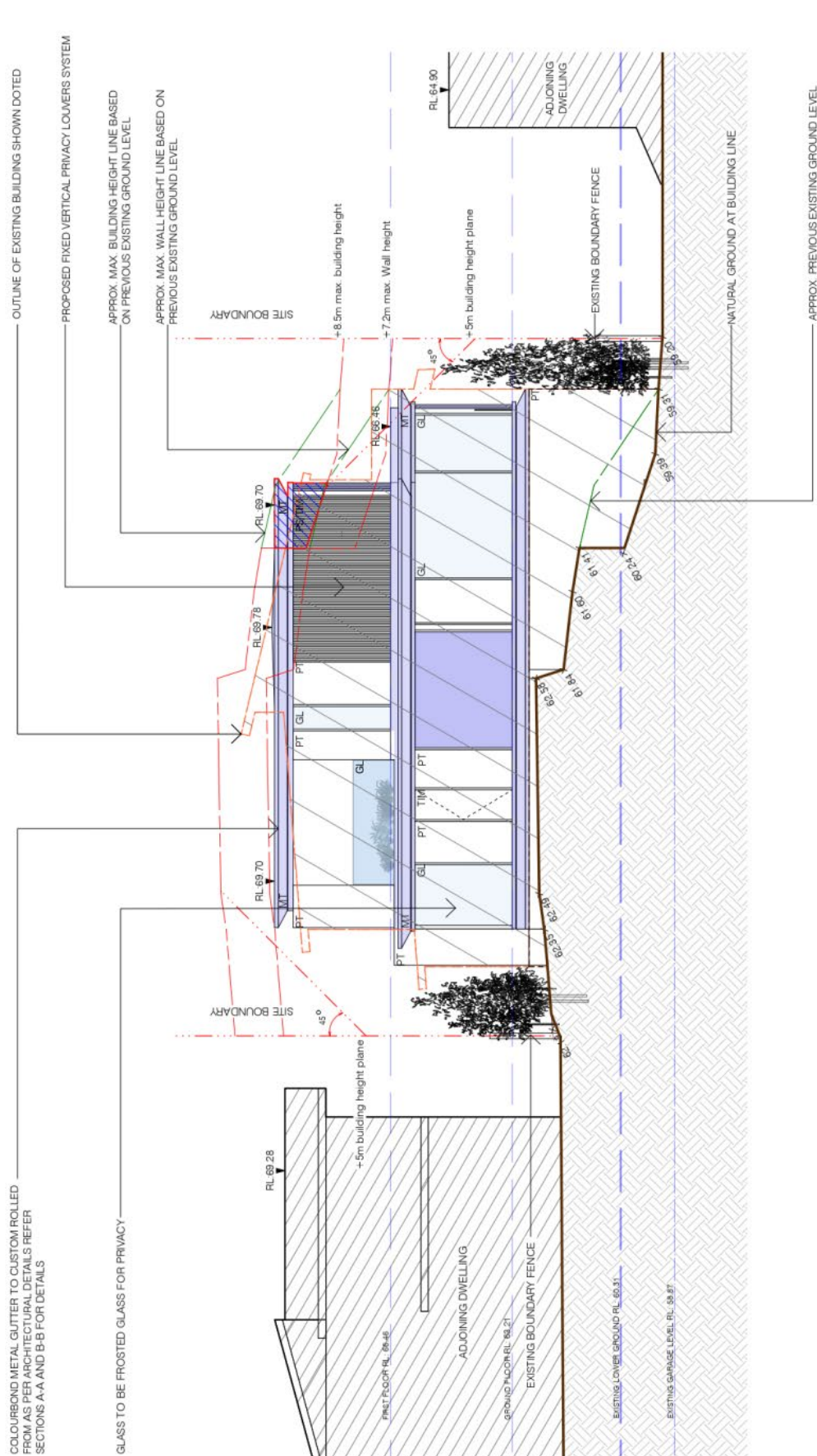
LEGEND	ALTERATIONS & ADDITIONS
MATERIAL	55 WHEELER PARADE, DEE WHY
BRICK	LOT B
CONCRETE	DP 338618
PAINT	DATE JANUARY 2019
SCREEN	SCALE 1:100 in A3
CEMENT RENDER	
TIMBER	
STONE	
FIBRE CEMENT SHEET	
GLASS	
LOUVER	
METAL ROOF	

JOB TITLE	ALTERATIONS & ADDITIONS
SITE ID	55 WHEELER PARADE, DEE WHY
LOT	B
DP	338618
DATE	JANUARY 2019
SCALE	1:100 in A3

ALTERATIONS & ADDITIONS	ALTERATIONS & ADDITIONS
55 WHEELER PARADE, DEE WHY	
LOT B	
DP 338618	
DATE JANUARY 2019	
SCALE 1:100 in A3	

ALTERATIONS & ADDITIONS	ALTERATIONS & ADDITIONS
55 WHEELER PARADE, DEE WHY	
LOT B	
DP 338618	
DATE JANUARY 2019	
SCALE 1:100 in A3	

ALTERATIONS & ADDITIONS	ALTERATIONS & ADDITIONS
55 WHEELER PARADE, DEE WHY	
LOT B	
DP 338618	
DATE JANUARY 2019	
SCALE 1:100 in A3	



REAR ELEVATION

ALTERATIONS & ADDITIONS - 55 WHEELER PARADE, DEE WHY

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INGHAM PLANNING PTY LTD

1

REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS

CLAUSE 4.3 MAXIMUM BUILDING HEIGHT PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

ALTERATIONS & ADDITIONS TO A DWELLING No. 55 WHEELER PARADE, DEE WHY

1. Introduction

Clause 4.6 of Warringah Local Environmental Plan 2011 (WLEP 2011) allows for flexibility in the application of certain development standards to achieve *"better outcomes for and from development by allowing flexibility in particular circumstances."*

The original natural ground level of the site at 55 Wheeler Parade has been the subject of substantial excavation on the southern side to create the existing lower ground floor, including a garage and driveway. Along the southern elevation, excavation of up to 2m has occurred. There are substantial level differences between the northern rear portion of the site and the southern side of the site.

In the rear northwest corner the site has an RL of 62.2. This falls more than 3m to RL 59 at the driveway entry to the garage in the lower ground floor. The existing lower ground floor has a floor level of 59.09, which is as much as 2m below the original ground level of the site.

Building height must be measured from existing ground level, which for that portion of the building that extends above the 8.5m maximum most of the site, is the level of the excavated level of the existing lower ground floor (RL 59.09)

Due to the excavated nature of the site, the relatively steep slope down from the northwest corner, and substantial level differences, a variation to the 8.5m height control prescribed in Clause 4.3 of WLEP, is necessary in order to enable the development to proceed.

2. The relevant development standard

Clause 4.3 of HHLEP 2012 sets out requirements in relation to height of buildings. Sub-clause 4.3(2) requires that a building on any land is not to exceed the maximum height shown for land on the Height of Buildings Map. The maximum building height for the subject land, as shown on this Map is 8.5m. Building height is measured as height above existing ground level, to the highest point of the building.

3. Requested variation to the standard

The proponent seeks an increase in building height of up to 2.114 above the 8.5m maximum building height standard that applies to the site, pursuant to clause 4.3 to allow portions of the building to have a maximum building height of up to 10.614m above existing ground level.

The height encroachment primarily occurs over the southern three quarters of the proposed Level 1 Living Room and roof over a part of the adjoining balcony, where these facilities are located above the entry, hallway, bathroom, study and garage located on the lower ground floor. This represents a relatively modest proportion of the overall building area.

The existing dwelling also encroaches on the 8.5m maximum building height control along the southern side at the rear, where the roof extends up to 1000mm above the 8.5 maximum building height control. The proposed development lowers the roof at the rear so that the height exceedance in this portion of the dwelling is reduced to around 500mm.

The development application plans include elevation and section drawings (Plans A21, A22 and A25 to A30) that illustrate the extent of height encroachments at the various sections of the building, including the western, eastern and southern elevations. A dotted line also shows the previously existing ground level, before the existing dwelling was constructed. 3D height plane drawings have also been prepared showing the 8.5m height plane for the existing dwelling and the proposed dwelling after alterations and additions, both measured to existing ground level and the previous ground level, prior to excavation for the existing dwelling.

Figure 1A and **1A** below, show the 8.5m building height plane, as measured from the existing ground level of the site. **Figure 1A** shows in white, the extent of the existing dwelling that extends above this height plane. **Figure 1B**, shows in white the extent of the new dwelling, after alterations and additions, that extends above the 8.5m building height plane.

Figure 1A – 8.5m Height Plane Measured from Existing Ground Level (Existing Dwelling)

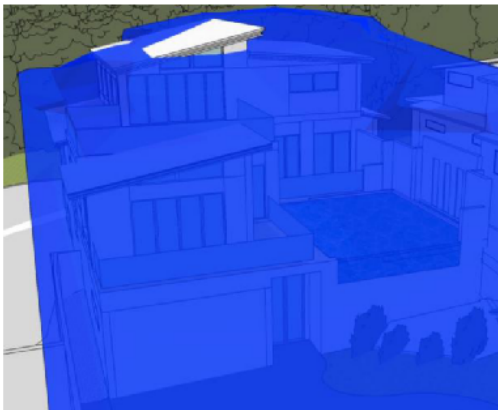


Figure 1B – 8.5m Height Plane Measured from Existing Ground Level (Dwelling After Alterations/Additions)

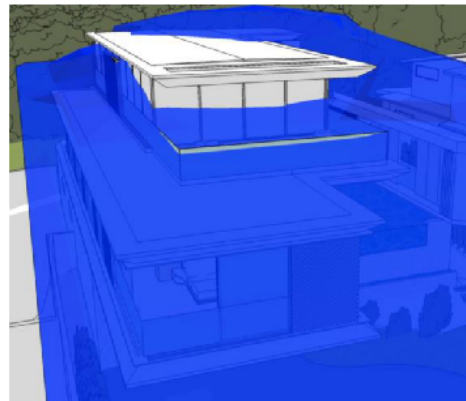


Figure 2A and **2B** on the following page, show the 8.5m building height plane, as measured from the previously existing ground level of the site, prior to excavation for the existing dwelling. **Figure 2A** shows in white, the reduced extent of the existing dwelling that extends above this height plane, measured on this basis. **Figure 2B**, shows in white the reduced extent of the new dwelling, after alterations and additions, that extends above the 8.5m building height plane measured on this basis.

Figure 2A – 8.5m Height Plane Measured from Previous Existing Ground Level (Existing Dwelling)

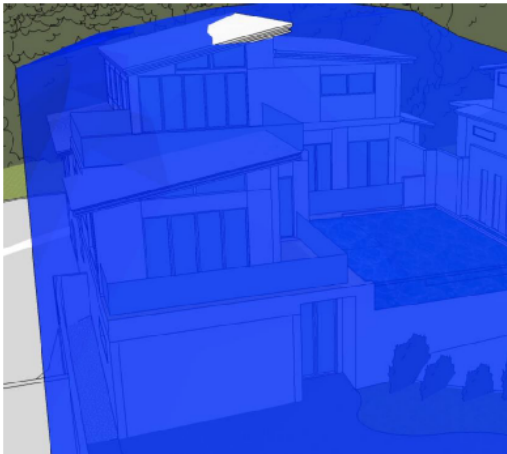
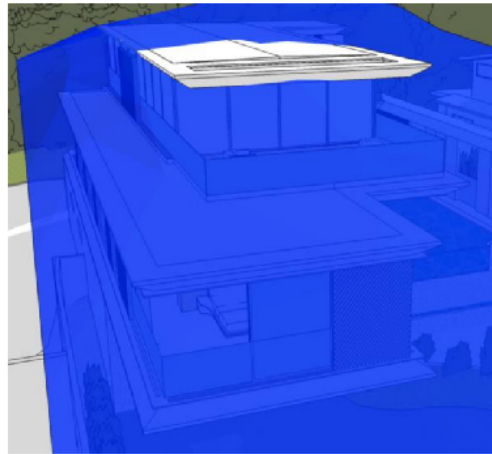


Figure 2B – 8.5m Height Plane Measured from Previous Existing Ground Level (Dwelling After Alterations/Additions)



The height encroachments are not visible from Wheeler Parade and are not easily seen from Headland Road or any other locations within the public domain. Only an encroachment of up to 300mm in the southwest corner of the building is seen from Wingala Reserve at the rear of the site. The height encroachments have no impact on streetscape or the character of the locality.

The height encroachments do not materially impact on neighbour amenity. As demonstrated in the shadow diagrams, the height encroachments result in no increase in shadows to solar access sensitive areas of neighbouring properties. Views and outlook available from neighbouring properties are away from the development site, towards the Pacific Ocean, to the northeast, east and southeast.

As noted above, the height encroachments primarily arise from the lowering of the ground level along the southern side of the site to accommodate the existing lower ground floor level. The issue of assessing building height encroachments and associated impacts on sites where the existing ground level is an excavated basement have been addressed by the Land and Environment Court in proceedings 2015 – NSWLEC 1189 *Stamford Property Services Pty Ltd v City of Sydney*. This judgement noted that the requirement to measure building height from existing ground level poses particular challenges where existing buildings occupy almost the entire site and the site has previously been excavated to accommodate a basement level.

In such circumstances the Court considered it appropriate to apply a ground plane across the site drawn from ground lines at the boundaries of the site. This ensures a practical application of the height standard. There are potentially 2 methodologies for calculating the applicable ground plane, using either a surveyed ground plane, or an extrapolated ground plane.

Figure 2A and **Figure 2B**, on Page 3 illustrates the extent of the proposed building that extends above the extrapolated ground height plane, as it existed before excavation for the

existing dwelling. Using this methodology only a limited portion of the top floor level, being primarily the roof element, extends above the 8.5m height plane.

4. Requirements of clause 4.6 – Exceptions to development standards

The objectives of clause 4.6 are as follows:

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

Clause 4.6(3) requires that a request to contravene the control, to demonstrate:

- "(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."*

In considering whether to grant consent for a development that contravenes a development standard, a consent authority must be satisfied that:

- "(i) the applicant's 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 to be carried out, and*
- (iii) the concurrence of the Secretary has been obtained.*

These matters are addressed below in Sections 5 and 6.

5. Compliance with the development standard is unreasonable or unnecessary

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons.

The proposal achieves the objectives of the height control.

The objectives of the control are noted and commented upon below:

The objectives for the height control are as follows:

- (a) To ensure buildings are compatible with the height and scale of surrounding and nearby development.*
 - (b) To minimise visual impact, disruption of views, loss of privacy and loss of solar access.*
-

- (c) *To minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments.*
- (d) *To manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The proposal achieves the above objectives as detailed in the following assessment.

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

The proposed building, after completion of alterations and additions will remain of a similar bulk, scale and height as the existing dwelling. The easterly extension of Level 1 is integrated into the building and will not materially on perceived height and scale, as viewed from surrounding and nearby development. Building bulk and scale, as measured by assessable gross floor area (GFA) is increased by only 6m² (less than 2%) from 357m² to 363m².

The RL of the proposed roof to Level 1 is similar to the RL of the roof of the neighbouring dwelling to the north at 51A Wheeler Parade. The height and scale of the building is compatible with existing development to the north, east and northeast.

Due to the significant drop in land levels on properties to the south, there is a building height difference equating to almost 2 storeys. However, the height relationship to the properties to the south is not materially different from the height relationship of the existing dwelling on the development site to these properties.

The westerly extension of Level 1 will increase the height and scale of the building as viewed from the neighbouring properties to the south. However, the combination of a generous 4.1m building setback to the southern side boundary and the built form backdrop of the existing elevated dwelling at No. 51A Wheeler Parade ensures that height and scale of the extended Level 1 will be compatible with the existing built form, as viewed from the south.

Land to the west comprises a public reserve. The height and scale of the western elevation is substantially the same as the western elevation of the existing dwelling. Due to the reconfigured roof, there is a marginal lowering of the building at the western elevation.

The proposed development is considered to be compatible with the height and scale of the existing development on the site and with surrounding and nearby development.

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

As demonstrated in the SEE, the proposed alterations and additions will result in minimal change to the existing visual outlook from neighbouring properties and the public domain.

The proposed additions, where they extend above the 8.5m maximum building height do not materially increase disruption of views, privacy or solar access to neighbouring properties.

Visual impact on the public reserve to the west will not be increased. The proposed westerly extension of Level 1 will marginally increase visual impact from residential properties to the north, east and south. However, as demonstrated in consideration of height objective (a), the extent of visual impact is relatively minor.

There is no reduction of views from the public domain. Views from dwellings located on residential properties around the site have their primary views orientated away from the subject land and will not have their views materially reduced. There are no adverse view impacts on neighbouring residential properties, the existing dwelling located immediately to the north of the site.

The 2 storey dwelling immediately to the north of the subject land at 51A Wheeler Parade, has district and ocean southeast across the development site from the windows of 2 ancillary rooms (a bedroom and a study), which will be partially obstructed. However, there will be no impact on views from primary rooms and adjoining terraces, as these views are to the north and northeast.

With respect to view impacts on No. 51A Wheeler Parade, reasonable view sharing is achieved on the basis that the views obstructed are across a side boundary within the primary building area of the site, are to secondary rooms and existing expansive district and ocean views from primary rooms/terraces to the north and northeast are unaffected. It should be noted that no additional district or ocean views would be available as a result of lowering the Level 1 westerly extension to a fully compliant building height.

As demonstrated in the SEE the proposal will have minimal impact on neighbour privacy compared to the existing dwelling. Reducing maximum building height to 8.5m would not in any way reduce privacy impacts.

As demonstrated in the SEE, the proposal results in only a minor increase in overshadowing of neighbouring properties to the south. The additional building height above 8.5m does not cast shadows over any solar access sensitive areas of neighbouring properties.

The proposed development, at the height proposed, has a minimal and satisfactory impact on visual outlook, views, privacy and solar access of neighbouring properties.

(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 have minimal impact on the scenic quality of the existing bush environment adjoining the western rear boundary of the development site. The height and scale of the western elevation is substantially the same as the western elevation of the existing dwelling and there is no reduction in building setback to the western boundary.

Due to the reconfigured roof, there is in fact a marginal lowering of the building at the western elevation, result in a minor reduction in visual impact, as viewed from the bushland reserve.

The subject land is located more than 600m from the coastal foreshore and as such will appear as a relatively minor element in the view corridors extending west from the coastline. As viewed from the coast, the proposed building, after the alterations and additions are completed, will appear substantially the same as the existing dwelling, given the significant viewing distance. The proposal will have no adverse impact on the scenic quality of Warringah's coastal environment.

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

The proposed development is hidden from view from Wheeler Parade, due to level differences and the screening effect of existing dwellings to the north, east and southeast of the site. There is a narrow view corridor extending up the access handle driveway off Wheeler Parade. However, given the separation distance and narrowness of the view, only a very small portion of the additions will be visible.

Due to the dwellings to the south being located at a much lower land level, the uppermost portion of the dwelling will be visible from Headland Road, located almost 60m to the south. However the first floor addition will substantially be subsumed into the elevated built form backdrop provided by the existing dwelling to the north at No 51A Wheeler Parade. .

There is minimal change proposed to the western elevation facing toward the bushland public reserve to the west. If anything, the western portion of the building will have a slightly reduced visual impact compared to the existing dwelling.

Those portions of the building extending above the 11m maximum building height control have no privacy, view or visual impact on existing dwellings in the locality. The shadow diagrams indicate that shadows cast by those portions of the building that extend above 11m in height, are contained within the shadows cast by the height compliant portion of the building.

Given the excavated site context, the sloping nature of the site, the integration of the additions within the existing built form and the context of neighbouring topography and development, it is considered that the proposal meets objectives of the maximum building height control.

The proposal achieves the objectives of the R2 Low Density Residential Zone

The zone objectives of the R2 Low Density Residential Zone are noted and commented upon below:

The zone objectives for the B4 Mixed Use Zone are as follows:

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

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

The proposal achieves these objectives as detailed in the following assessment.

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

The proposed alterations and additions maintain the existing low-density residential environment of the site and locality. The existing dwelling encroaches above the 8.5m maximum building height control due to the slope of the land and site excavation along the southern side to accommodate the lower ground floor level. This situation is not substantially changed by the proposed alterations and additions. In these circumstances, the requested height variation does not conflict with the low-density residential character of the locality.

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

The proposal is for residential development. Accordingly, Objective (b) in relation to other land uses is not applicable.

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

The proposed development does not result in any reduction in landscaped area. The relationship of the existing dwelling to the bushland natural environment to the west is not changed as a consequence of the proposed alterations and additions. The proposed building, after completion of alterations and additions will maintain substantially the same landscaped setting and harmony with the natural environment, as the existing dwelling.

The proposed development achieves the objectives of the R2 Low Density Residential Zone to substantially the same extent as the existing dwelling.

Compliance would result in a poorer planning outcome

One of the objectives of Clause 4.6 is to allow better outcomes to be achieved. In this case, as discussed above, a better architectural, urban design and occupant amenity outcome is achieved by allowing a height breach, facilitating a more integrated design outcome and more appropriate floor to ceiling height clearances.

While it is feasible to retain the existing roof form for the rear portion of the dwelling so that there is no height change in this location and alter the roof form of the Level 1 addition so that the roof slopes down from north to south (with floor to ceiling height reduced to 2.4m, dropping to 2.2m at the wall of Level 1) to eliminate most of the height exceedance, such an outcome compromises the architecture of the building and materially reduces the amenity of the Level 1 living room. Amending the design to achieve strict numerical compliance offers no benefits in terms of urban design, planning or amenity outcomes.

Lack of impact

As noted in the above discussion, despite the numerical height non-compliance, the environmental and visual qualities of the locality, streetscape and amenity of surrounding properties will be maintained to substantially the same extent as a development that is of a numerically compliant height.

The extent of the non-compliance is relatively modest when compared to the existing dwelling and measured to extrapolated previous existing ground level. Height controls are applied with some flexibility on sloping and excavated sites the height and built form outcome is commensurate with what would be expected on a sloping site, where existing floor levels are retained, rather than a whole new building constructed.

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

The numerical height non-compliances result in no increase in environmental impact compared to a complying height and offer the benefit of facilitating alterations and additions which provide for an integrated building form over the building as a whole. The alternative of retaining the existing built form for the rear half of the dwelling and lowering the Level 1 extension would compromise the amenity and architecture of the building for no material benefit.

The non-compliances primarily arise from the excavated nature of the southern portion of the site and the slope of the land. In such circumstances allowing some variation in the height control is justifiable, particularly where a better planning outcome is achieved.

Council must also be satisfied that the proposal meets the objectives of the standard and the objectives of the subject zone. As discussed above the proposal meets the objectives of the height standard and as detailed in the SEE and in this clause 4.6 submission, also meets the objectives of the B4 Mixed Use zone.

Also, in acting in the Secretary's concurrence role, Council must consider:

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

In relation to (a), the proposed breach is minor and is not of any State or regional significance.

In relation to (b), there is no public benefit from maintaining the standard as there is no adverse impact on the public domain or neighbour amenity, the proposal is generally consistent with other relevant planning controls and a better planning outcome is achieved. Building height standards should be applied with some degree of flexibility on excavated and sloping sites. Such an approach is in the interest of orderly and efficient development of land.

As noted above enforcement of the control would result in a poorer planning outcome, which is not in the public interest.

In relation to (c), there are no other matters that require consideration.

Conclusion

The proposed building form and height is generally consistent with the existing dwelling on the site and existing contemporary dwellings in the locality. The proposal achieves the objectives of the building height control and the objectives of the R2 Low Density Residential Zone, notwithstanding the numerical height non-compliance arising from the excavated ground level and slope of the land.

The development, in the form proposed, provides for an appropriate building typology and density, with no material environmental impacts and is consistent with the objects of the EP&A Act. Requiring compliance is unreasonable and unnecessary in this case, as it would not result in any material benefit and in relation to architecture, urban design or amenity.

Requiring strict numerical compliance would create a less desirable planning outcome. Retention of existing building form and height for the rear portion of the building and lowering of the Level 1 extension by adopting a different roof form and lower floor to ceiling height clearances would compromise the architecture of the building and materially reduce occupant amenity.

Some flexibility with respect to the application of the building height control on sloping excavated sites is appropriate. Flexible application of the building height control development standard allows an improved architectural outcome that contributes positively to the character of the locality, with no material impact on neighbour amenity or the environment. The requested variation to the 8.5m maximum building height standard is appropriate and worthy of support.

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