

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 10 JUNE 2020



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 10 June 2020

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
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3.1	MOD2020/0062 - 31 Victoria Parade, Manly - Modification of Development Consent DA384/2009 granted for Alterations and additions to an existing four 4 storey Residential Flat Building	5
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 2 JUNE 2020

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 2 June 2020 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	MOD2020/0062 - 31 VICTORIA PARADE, MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA384/2009 GRANTED FOR ALTERATIONS AND ADDITIONS TO AN EXISTING FOUR 4 STOREY RESIDENTIAL FLAT BUILDING
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/321761
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** MOD2020/0062 for Modification of Development Consent DA384/2009 granted for alterations and additions to an existing four 4 storey Residential Flat Building on land at Lot CP SP 11799, 31 Victoria Parade, Manly, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0062
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot CP SP 11799, 31 Victoria Parade MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA384/2009 granted for Alterations and additions to an existing four 4 storey Residential Flat Building
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 11799
Applicant:	Platform Architects Pty Ltd
Application Lodged:	18/02/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/03/2020 to 16/03/2020
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 52%
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal involves the modification of Development Application DA384/2009 for the alterations and additions to an existing four (4) storey Residential Flat Building including two (2) additional storeys comprising of four (4) new units, that was approved by Manly Independent Assessment Panel on the 19 August 2010.

The application is referred to the Development Determination Panel for determination due to the Panels previous involvement in the approval process of the initial application and subsequent modifications.

The site is zoned R3 Medium Density Residential under Manly Local Environmental Plan 2013 (MLEP 2013). Development for the purposes of a "Residential Flat Building" is permissible with consent.

The application includes additional building height variation to the existing approved elements on the Roof Level. The height increase is a result of enclosing the stairway from the Level 4 apartments to their approved rooftop terraces to provide weather protected access, and increasing the height of the approved privacy walls within the roof top terrace area.

There is no change to the Level 4 building height, with the top of the parapet of Level 4 maintaining the approved building height of RL21.71.

The enclosure of the stairwell increases the building height from the previously approved height of 18.86m to 19.87m (RL23.2 to RL24.21, an increase 1.01m), demonstrating a variation of 52.84%. The existing building has an approved variation of 45.07%, therefore the proposed modification represents an increase in variation of 7.77%. However, the amendment to the building height is a minor portion of the overall built form.

Whilst no assessment against the objectives of Clause 4.6 is required, it has been determined that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under MLEP 2013 and the additional height variation can be supported on its merit.

The application also includes amendments to the windows, schedule of materials/finishes and internal re-configurations that are considered to provide an improved residential amenity, and a similar bulk and scale that Council considered consistent with the character of the area, and the Victoria Parade streetscape.

The public exhibition of the application resulted in two (2) individual submissions being received which raised concerns with the approved development. The issues raised include the additional floor levels, additional units, parking, character and heritage concerns.

The issues raised in the submissions have been addressed in the "Public Notification" section of this report. Many of these concerns raised have been approved in previous applications, however the character and heritage concerns have been addressed and do not warrant refusal of the proposal.

The assessment concludes that the amended design is appropriate for the heritage significance of the site and would not have any unreasonable amenity impacts particularly in regards to privacy and views.

Accordingly, based on the detailed assessment contained in this report, the application is referred to the Development Determination Panel with a recommendation for approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify approved Development Consent No. 384/2009, issued on 19 August 2010.

The approved consent is for the alterations and additions to the existing 3/part 4-storey residential flat building which includes two (2) additional storeys comprising of four (4) additional apartments.

The modified works proposed as part of this application are as follows:

- The private stairways to the roof terraces is to be enclosed to provide weather protection and help with waterproofing issues, increasing the overall height of the proposal from RL23.2 to RL24.21 (increase in height of 1.01m). The enclosure have been designed on an angle to ensure they are not visible when viewed from across the road,
- The wall height between the rooftop plant areas and the roof terraces is to be increased in

- height by 600 mm, to provide screening from plant areas to improve internal amenity,
- Bedroom window in Units 1, 3 and 5 moved to suit new internal robe location,
- The main entry door to be replaced with a metal and glass door,
- Laundries of Units 1 - 6 relocated internally,
- The window heads of Units 7-10 reduced to 2.4 mm above floor level to align with the front facade,
- New window to be installed in the rear elevation of Bed 1 in Units 8 and 10 to comply with BCA requirements,
- One (1) window in bedroom 2 of Units 7-10 is to be reduced in width from 900 mm to 600 mm, and
- Two (2) smaller windows in bedroom 1 of Units 7 and 9 consolidated into one (1) window.

There is no change to the previously approved parapet height of Level 4, i.e the proposal maintains the previously approved height of RL21.71, the increase in building height is only in the area attributed to the roofing over the access stairs to the roof terraces. There is also no change to the previously approved front, rear, or side setbacks of Level 3 and Level 4.

After initial assessment of the proposed modified works, concerns were raised by Councils' Heritage Officers specifically in regards to the change in the front setback of the building. Councils' Heritage Officer found that the front setback on Levels 3 and 4 were not acceptable from heritage perspective, in that the change in the front setback would have an adverse impact upon the heritage significance of the building. There was also Heritage concern with the proposed changes to the previously approved external materials and finishes.

As a result, the applicant submitted amended plans that reverted back to previously approved front setbacks for Levels 3 and 4, and with a new schedule of external materials and finishes. As the amended plans demonstrated the previously approved front setback, the amended plans were not re-notified, which is in accordance with the Northern Beaches Councils' Community Participation Plan. The assessment for the modification has been undertaken utilising the amended plans.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.2 Privacy and Security
 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

SITE DESCRIPTION

Property Description:	Lot CP SP 11799 , 31 Victoria Parade MANLY NSW 2095
Detailed Site Description:	<p>The subject property is legally identified as SP 11799 and commonly known as 31 Victoria Parade Manly. The site is located within the R3 Medium Density Residential zone as demonstrated within the Manly Local Environment Plan 2013.</p> <p>The site is located on the northern side of Victoria Parade. The property is regular in shape with a total size area of 303.5sqm. The Victoria Parade frontage to the site measures 19.42m, with an average depth of 15.85m.</p> <p>The site currently contains a three-storey residential flat building, which is under construction to provide a five storey residential flat building with roof top terraces.</p> <p>The subject building has been identified as a heritage item in Schedule 5 of Manly Local Environmental Plan 2013 (MLEP 2013).</p> <p>Manly Beach is located to the east of the subject site, on the eastern side of South Steyne.</p> <p>Surrounding properties to the northeast, at 15-16 South Steyne, is a developed with a two-storey commercial premises. The adjacent property to the southwest, at 29 Victoria Parade, is developed with a three-storey residential flat building, and the adjoining site 19-21 South Steyne had approval for a nine (9) storey Far West Children's School/Health facilities.</p>

Map:



SITE HISTORY

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

- Development Application **DA384/2009** for the alterations and additions to an existing four (4) storey Residential Flat Building including two (2) additional storeys comprising of four (4) new units, was approved by Manly Independent Assessment Panel on 19 August 2010.
- Modification Application **DA384/2009 – Part 2**: Section 96 to modify approved alterations and additions to an existing four (4) storey Residential Flat Building including two (2) additional storeys comprising of four (4) units, was approved by Development Assessment Unit on 8 March 2012.
- Modification Application **DA384/2009 – Part 3**: Section 96 to modify approved alterations and additions to an existing four (4) storey Residential Flat Building including two (2) additional storeys comprising of four (4) units - involving new lobby, relocate lift, change to layout of units, new facade, changes to roof of the upper two (2) levels, new terraces and modification to building height, was approved by the Development Assessment Unit on the 20 February 2013.
- Modification Application Application **DA384/2009 – Part 4**: Section 96 to modify approved alterations and additions to an existing four (4) storey Residential Flat Building including two (2) additional storeys comprising of four (4) units – involving deletion of condition of consent ANS06 regarding terraces to Units 9 and 10, changes, to internal layouts, modifications windows, doors, external façade and roof of the additional floors, was approved by the Manly Independent Assessment Panel on the 21 April 2016.
- Modification Application **DA384/2009 – Part 5**: Section 96(2) to modify approved alterations and additions to the existing residential flat building, was approved by the Development Determination Panel on the 28 March 2018.
- Modification Application **MOD2019/0013** for the alterations and additions to an existing four 4 storey Residential Flat Building including two 2 additional storeys comprising of four 4 new units, including changes to the privacy screens and windows, was approved by the Development Determination Panel on the 9 July 2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA384/2009, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA384/2009.</p> <p>When analysis in respect of the subject application it is clear that the approved development in its modified state will continue to spatially relate to its surrounds and adjoining development in a consistent manner as originally approved. The previously approved streetscape, privacy, solar access, and general amenity outcomes afforded by the original application are not altered.</p> <p>The Court in the authority of <i>Stavrides v Canada Bay City Council</i> [2007] NSWLEC 248 established general principals which should be considered in determining whether a modified proposal was "substantially the same" as that originally. A number of those general principles are relevant to the subject application, namely:</p> <ul style="list-style-type: none"> • The proposed use does not change; • The proposed residential density does not change;

Section 4.55(1A) - Other Modifications	Comments
	<ul style="list-style-type: none"> • The building form, footprint, setbacks, floor space, landscaping and drainage circumstances are not significantly altered; • The proposal maintains a complimentary and compatible streetscape presentation; • The modifications maintain the previously approved residential amenity outcomes (to residential and public properties within the vicinity of the site) in terms of privacy, visual bulk and overshadowing; and • The modifications have resulted from a desire to refine the detailing of the application. <p>On the basis of the above analysis it is considered that the application is “essentially or materially” the same as the approved development such that the application can be appropriately categorised as being “substantially the same” and appropriately dealt with by way of Section 4.55 (1A) of the Act.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the Building Height variation and Heritage concerns.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Clive Owen Gestern Williams	3 / 29 Victoria Parade MANLY NSW 2095
Mrs Janette Margaret Wall Mr Mark Joseph Wall	24 / 25 - 27 Victoria Parade MANLY NSW 2095

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

- Objections to previously approved work where as follows:

Additional Floors/Units
Parking
Noise
Character
Heritage
Overshadowing

The whilst the matters raised above are in regards to works already approved, due to the changes to the windows, external materials of the building, and a minor increase in building height, the concerns for the previous approval will be addressed against the amended changes as follows:

- ***Concern has been raised in regards to developments impact on the character of the streetscape and the impact on the heritage value of the building and nearby heritage items.***

Comment:

Concern was raised that the development was inconsistent with the existing streetscape due to the proposed modern design, height, bulk and scale, setbacks and selected materials. The subject building is heritage item, being Item I242 - Residential flat building. It is also adjacent to heritage items and within the vicinity of heritage items, all listed in Schedule 5 of Manly Local Environmental Plan 2013, being:

- Item I242 - Residential flat building - 31 Victoria Parade
- Item I226 - House - 15-16 South Steyne
- Item I241 - Residential flat building - 29 Victoria Parade
- Item I225 - Residential/commercial buildings - 7 and 14 South Steyne
- Item I2 - All stone kerbs - Manly municipal area
- Item I238 - Street trees - Victoria Parade

It is noted that within the vicinity of the subject site that there are a number of older styled dwellings/buildings, and other examples of modern types of development, for example 25-27 Victoria Parade contains a contemporary 4/part 5-storey residential flat building and 29 Victoria Parade is a refurbished 3/part 4-storey residential flat building. Therefore, the development is consistent with the style of the immediate area.

Additionally, Councils' Urban Designer and Heritage Officer has reviewed the proposed development and supports the proposal as detailed in their referral comments in this report. See "Referrals - Internal Referral Body" in this report for detailed comments.

On balance, the amendments should be approved as the works are reasonable for the site and locality by virtue of a presentation which is consistent with characteristics of the area. The proposal provides sufficient spacing and materials to reduce any unreasonable impact caused by building bulk.

Given the above it is considered that issue has been addressed and does not warrant further amendment of the proposal and/or refusal of the application.

- ***Concern was raised in regards to the parking, overshadowing, noise, additional units and additional floor levels.***

Comment:

All concerns raised above were addressed within the original consent, and subsequent modifications. The works proposed for this modification do not make any amendments, or

create additional changes to the previously approved setbacks, parking, additional units, floor levels or unreasonable overshadowing.

Given the above it is considered that these issues have been previously addressed and does not warrant further amendment of the proposal and/or refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The modification application is for alterations and additions to an existing residential flat building.</p> <p>Heritage trees of local significance are located along Victoria Parade. These are item i238 identified in the Manly Local Environmental Plan 2013 as Norfolk Island Pines, and shall be protected during construction works. No landscape issues are raised in regard to the modification application subject to the provision of a Tree Protection Plan for the two Norfolk Island Pines located fronting both No. 31 and No. 27-29 Victoria Parade, that are in close proximity to the site and may be impacted unless tree protection measures are in place.</p> <p>Planner Review</p> <p>The modification is for alterations and additions to an existing residential flat building that is currently under construction. The amendments proposed to the development have no impact on the heritage listed Norfolk Island Pines. Therefore, the Tree Protection Plan is not required to be conditioned prior to the issue of the construction certificate in this instance.</p> <p>Construction management has been assessed and conditioned within the original application and subsequent modifications. However, it is obligation of the applicant to ensure the protection of the Heritage trees of local significance along Victoria Parade have appropriate tree protection measures, particularly trees fronting both No. 31 and No. 27-29 Victoria Parade, to ensure they are not impacted during construction.</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 it is heritage item, being Item I242 - Residential flat building. It is also adjacent to heritage items and within the vicinity of heritage items, all listed in Schedule 5 of Manly Local Environmental Plan 2013.</p> <p>Item I242 - Residential flat building - 31 Victoria Parade</p> <p>Item I226 - House - 15-16 South Steyne</p> <p>Item I241 - Residential flat building - 29 Victoria Parade</p>

Internal Referral Body	Comments
	<p>Item I225 - Residential/commercial buildings - 7 and 14 South Steyne</p> <p>Item I2 - All stone kerbs - Manly municipal area</p> <p>Item I238 - Street trees - Victoria Parade</p> <hr/> <p>Details of heritage items affected</p> <p>Details of the heritage item and the items within the vicinity as contained in the Heritage Inventory are:</p> <p>Item I242 - Residential flat building - 31 Victoria Parade</p> <p><u>Statement of significance:</u> Built in 1919 as a sophisticated and well-executed block of seven flats, Newstead is highly significant as an example of the architecture of one of Sydney's most important 20th century architectural practices, Waterhouse & Lake. Newstead is a very good, representative example of Sydney's interwar period flat-building boom, in which Manly was a forerunner. A key building in the local streetscape, Newstead is of high local aesthetic significance as it demonstrates the increase in density of residential accommodation at Manly during the interwar years. This block of flats is one of the earliest blocks of this scale to have been erected in Manly.</p> <p><u>Physical description:</u> Newstead Flats at 31 Victoria Parade is located on the north side of the street. The building is three storeys high at the street frontage presenting a broad symmetrical façade to Victoria Parade, and is laid out in a plan order typical to the period with two flats per floor accessed by a central common stairway. A seventh flat is located in the fourth floor rear of the building. The walls of the building are black brick with grey cement pointing but the main entrance is emphasised by a finely-executed sandstone arch and surrounding walling. The front door is a single clear finished door with a top panel of glass and three vertical timber panels below. The building is constructed dark face cavity brickwork in stretcher bond and English bond at the base. At the sill and head of each window, a string line of moulded brick projects a course. There are flat lintel arches to most windows and freestanding relief arches to the balcony windows, forming a neat brick screen to the balconies. There is a moulded brick parapet coping with semi-circular tops to two full-length projecting bays located on either side of the stair bay. The entrance is made by a proper porch of Sydney sandstone with segmented moulded arch and first floor window sill. 'Newstead Flats' is inscribed in inset bronze lettering above the main entrance. Original windows to the projecting bays and central stair bay are double-hung 6 on 6 box frame sashes, clear glazed, with horns. Windows infilling the balconies to either side of the central stair bay include sliding casement windows to the ground floor (c1920s), and awning hung casement windows to the first and second floors</p>

Internal Referral Body	Comments
	<p>(c1950s). Fixed coloured glass to the square openings above the relieving arches are of uncertain date, possibly original. The only interior able to be inspected was the stair, which is of painted concrete, with black and white matching terrazzo treads and integral Queensland maple balustrade. Walls of the stair hall are face brickwork, except the north-facing walls at ground, first and part of second-storey landings, which have later vertical western red cedar shiplap boards (125mm). The second floor stair hall is Plasterboard with steel framed flush fire door. Doors into the individual flats are original high-waisted Queensland maple with a glazed 6-pane upper light. Interior walls of flats appear to be set plaster. All interior finishes in the stair hall are original to the building with the exception of the shiplap boards, tiles to the ground floor, and the second floor plasterboard and fire door, which date to c1977.</p> <p>Item I226 - House - 15-16 South Steyne <u>Statement of significance:</u> Representative substantial Victorian Italianate house. The Terraces are rare in local area as they are considered to be the only surviving 19th century terraces on Manly's beachfront and they are also likely to be the last surviving buildings designed by the Blacket family. Its aesthetic qualities are still discernible. <u>Physical description:</u> The Terraces is a 2 storey masonry building with stucco finish on the facade. Its aesthetic qualities include a full height projecting bay and a gable end with timber barge decoration on the main facade. Internal fabric including the stair, timber joinery, fire places and original room layout.</p> <p>Item I241 - Residential flat building - 29 Victoria Parade <u>Statement of significance:</u> The Carlton is a good example of late Federation period Arts and Crafts style. It makes an important contribution to the streetscape character of Victoria Parade. <u>Physical description:</u> The Carlton, a three and four storey brick building, built as a hotel/boarding house in 1911. It retains much of form and detail of its late Federation - Arts and Crafts period character in the front section, facing Victoria Parade. It has three arched masonry openings at ground floor level (with later infills) and upper verandahs featuring fretted valances and balustrades, paired posts and protruding bays at the centre at first floor level and at the sides at second floor level. In the front section, internally, there is some very distinctive timber joinery to the door surrounds and friezes of the entry foyer.</p> <p>Item I225 - Residential/commercial buildings <u>Statement of significance:</u> A good example of early 20th century architectural styles in this form of development; in textural interest provided to streetscape and in showing Art Nouveau and California Bungalow influence.</p>

Internal Referral Body	Comments																					
	<p><u>Physical description:</u> Group of eight buildings of two to four floors, generally brick with render decoration. Provide a range of early twentieth century architectural styles from c. 1910-25, showing Art Nouveau and California Bungalow decoration and ornament in timber, shingle, brickwork and render.</p> <p>Item I2 - All stone kerbs <u>Statement of significance:</u> Stone kerbs are heritage listed. <u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p> <p>Item I238 - Street trees <u>Statement of significance:</u> Historical line of HG Simth's intended Victoria Park. Aesthetic significance. <u>Physical description:</u> Norfolk Island Pines on both sides of road planted in carriageway.</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table> <p>Consideration of Application</p> <p>The proposal seeks consent for modification to the approved Modified Construction Certificate CC2019/1174, following the Development Consent DA384/2009 and five approved modification applications for various changes with the latest approved modification application being Mod2019/0013.</p> <p>The proposed modifications with this application involve an enclosure of the stairway to the rooftop terrace; minor adjustments to the fenestration on the rear and side elevations; increased wall heights on the rooftop terraces; reduction to the front (Victoria Parade) setback on levels 3 and 4, and the removal of the Juliette</p>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
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RAIA Register of 20th Century Buildings of Significance	No																					
Other	No																					

Internal Referral Body	Comments
	<p>balconies facing Victoria Parade on these levels.</p> <p>Further to a review of the available documents, it is considered that the proposed changes - other than the reduced front setback - will not have increased impact on the overall scale or bulk of the approved building. The enclosure of the stairway to the rooftop terrace will have negligible impact upon the views of the building as it is believed that this enclosure will not be visible from the street level. However, the reduced front setback on levels 3 and 4 is not acceptable from heritage perspective as it is considered that this will have an adverse impact upon the heritage significance of the building and the heritage items within the vicinity.</p> <p>Therefore, no objections are raised to the majority of changes on heritage grounds, subject to imposition of 2 conditions; being; to retain the approved front setback from Victoria Parade, to levels 3 and 4; and the submission of the final external finishes schedule.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Yes Required? Has a CMP been provided? Yes Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p> <p>Amended plans where received that removed the proposed changes to the front setback and have reverted to the approved front setbacks, this is supported. A schedule of external finishes was also submitted that satisfies council Heritage requirements, except for the front entry door. The Plans continue to indicate a metal door which is not supported, the approved timber door is to remain. Therefore, there is no objection subject to the condition for the front door.</p>
Strategic and Place Planning (Urban Design)	<p>Urban Design Comments May 2020:</p> <p>The applicant has submitted more information to demonstrate that the additional height to the stair enclosure will not obstruct any view from the surrounding apartments. As such the proposed modification can now be supported.</p> <p>Previous Comments:</p> <p>The amended modification proposal submitted on March 2020 involves adjustments to the fenestration on the rear and side elevations, modifying the enclosure of the stairways to the rooftop terrace and increased wall heights on the rooftop terraces. The proposed adjustments to the fenestration can be supported but the increase in height to the stair enclosure of about one metre and increased wall heights to hide the a/c units on the roof terrace will have additional builtform impact when viewed from neighbouring buildings. It could also obstruct more views from the surrounding</p>

Internal Referral Body	Comments
	apartments.

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 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

1. This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

- (a) the development consists of any of the following:
 - (i) *the erection of a new building,*
 - (ii) *the substantial redevelopment or the substantial refurbishment of an existing building,*
 - (iii) *the conversion of an existing building, and*
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the approved development is for the alterations and additions to the existing

3/part 4-storey residential flat building on the land which included two (2) additional storeys comprising of four (4) additional apartments.

The application to modify the approved development does not change the elements which were considered in the original assessment and subsequent modifications undertaken against the provisions of the SEPP and the Apartment Design Guide (ADG). Therefore, no further assessment against the provisions of the SEPP and ADG are required.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 284219M_09 dated 3 February 2020). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 284219M_09 dated 3 February 2020).

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

This certificate is a revision of certificate number 284219M lodged with the Council on 10 December 2009 with application DA384/2009.

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 subject site is identified as being located within the Coastal Use Area under the provisions of SEPP (Coastal Management) 2018. Upon review of the modified application, Council can continue to be satisfied of the matters prescribed by clauses 13, 14 and 15 of this policy.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	13m	18.86m (45.07% variation)	19.87m Roof over access stairs 18.79m Terrace Privacy Walls	52.84% 44.53%	No No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.6 Exceptions to development standards

In *Gann v Sutherland Shire Council* [2008] NSWLEC 157, the Court was prepared to distinguish an earlier line of authority, and hold that, since Section 96 (now 4.55) was a “free-standing” provision, it could be utilised to modify a consent even where (in that case) no SEPP 1 or Clause 4.6 Objection could be lodged.

By application of that case, and in the context of this application, the Council can consider (and approve) a modification that still results in a breach of the height control, without reference to Clause 4.6, relying instead on the “free-standing” power of Section 4.55.

In this regard, the matters for consideration under Clause 4.6 provide a reasonable and consistent

means of assessing any Section 4.55 that is beyond the provisions of the planning controls.

Whilst this modification application will result in a height that exceeds the maximum permitted by Clause 4.3 of MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

As this application has been made under Section 4.55 of the EP&A Act, which is a free-standing provision which, in itself, authorises the development to be approved notwithstanding any breach of development standards.

As a result, Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. However, whilst the Clause 4.6 does not apply to the modification application, the merits of the building height departure have been assessed below to ensure consistency.

Description of non-compliance:

The modification results in a further breach of 1.01m to the Building Height development standard of 13m to provide an overall building height of 19.8m. This area of additional height variation is the roof of the stairway from the Level 4 apartments to the approved rooftop terraces.

Development standard:	Height of buildings
Requirement:	13m
Proposed:	19.8m Roof over Access Stairs 18.79m Privacy Walls of Roof Terrace
Percentage variation to requirement:	52% and 44.5%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

excluded from the operation of this clause.

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by 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:

As detailed above, a written request is not required to be submitted.

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 R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘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 subject site currently has a valid development consent for a residential flat building with a maximum height of 18.7m. The proposed modifications seek to enclose the stairway from the Level 4 apartments to their approved rooftop terraces to provide weather protected access. This area increases the building height by 1.01m.

The roofing area is not visually prominent to the Victoria Place street view, minimising potential visual building bulk and amenity impacts. The stairway enclosure is to be raked from the Victoria Parade frontage, and the new maximum building height breach is a distance of approximately 4.5m from the site's Victoria Parade frontage. The spatial distance, elevation, raked slope and use of a recessive coloured roofing material, ensure the additional building height is not visually prominent and is consistent with the approved built form context, the Victoria Street area and the surrounding Manly locality. See Figure 1 below.

The privacy walls between the rooftop terraces and plant areas are to be increased in height by 0.6m to screen the plant area from the terraces. The walls are centrally located within the Roof Level, with a spatial distance of 9.4m to the front setback and 6.3m to the rear setback. As a result these walls will not be readily seen or visually predominate from the public domain in Victoria Parade and are do not create unreasonable visual impact when viewed from neighbouring properties. See Figure 1 below.



Figure 1: Artist impression of the streetview from Victoria Parade, demonstrating how the roofing will not be readily seen from the streetview. (Source: Platform Architects Plan, Plan Issue B 17/3/220)

The additional building height is considered a minor area and is consistent with the height of surrounding buildings, particularly as the rear neighbouring site of 22 Wentworth Street (Royal Far West) is proposed to be a 9 storey development. See Figure 2 below.

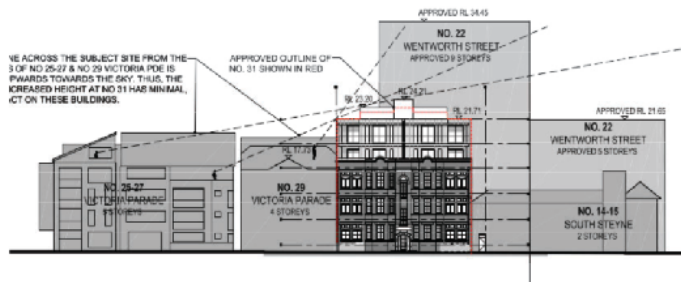


Figure 2: Comparison of height with surrounding buildings. (Source: Platform Architects Plan, Streetscape Rev A, 1/5/220)

The modifications to the building height are considered consistent with the approved development, and not inconsistent with the prevailing building height surrounding the site or the desired future character of the locality.

The development satisfies the objective.

b) to control the bulk and scale of buildings,

Comment:

The changes to the stairwell building height do not result in any unreasonable additional bulk on the building. The design of the stairwell roofing will not have adverse amenity impacts on the

adjoining properties, with regards to visual privacy and visual bulk due to the spatial distance from the setbacks, the elevation and recessive materials. The additional building height variation is not considered to be overbearing when viewed from adjacent land, and does not create opportunities to overlook adjacent properties from consecutively higher areas.

The additional building height non-compliance is of the stairwell roof is located within the building footprint, approximately 4.5m from the front setback, and is relatively minor in size when compared to the entire built form and surrounding area. See Figure 3 below.

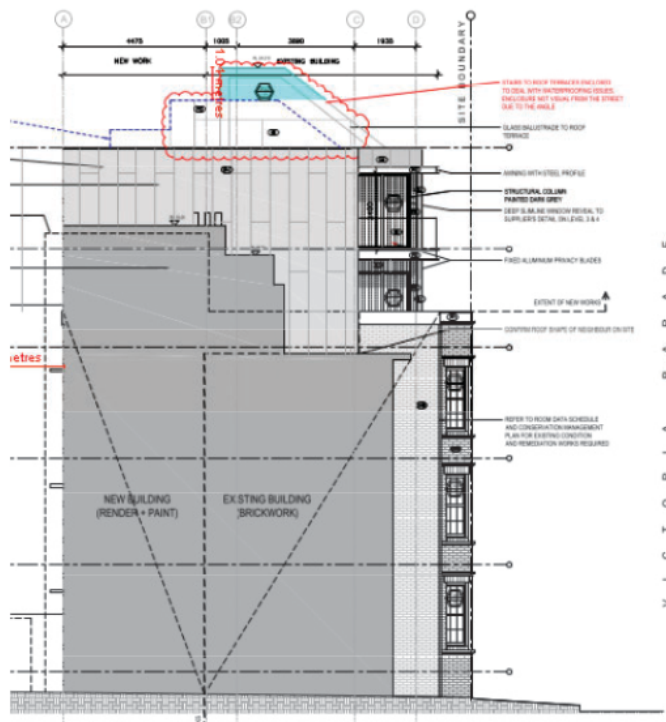


Figure 3: Additional building height variation shown in blue.

The proposed roofing and privacy walls within the roof terrace areas will provide an appropriate visual presentation, minimises amenity impacts to the neighbouring sites, and will continue to be a similar representation of the existing approved residential flat building when viewed from the Victoria Street and surrounding sites.

The additional non-compliance is considered to not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the bulk and scale from the additional height is considered to be compatible.

The development satisfies the objective.

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:

It is noted that the non-compliance with the height requirement in itself does not have a severe impact on views and solar access, by virtue of details provided in the submitted plans, and that there is no unreasonable impact to the adjoining sites.

The design of the proposal will not have adverse amenity impacts on the adjoining properties with regards to visual privacy and visual bulk due to the location of the additional building height on the upper Roof Level, meaning the additional variation is not readily seen from the Victoria Street view.

The additional variation does not create opportunities to overlook adjacent properties on either side of the subject building from consecutively higher terraces.

The changes to the building height and the roof form do not create any new or additional disruption of views. A view analysis has been provided to demonstrate the additional variation will not interrupt any view lines.

Therefore, the height non-compliance does not result in any unreasonable loss of views to, from, or between public or private spaces.

The development satisfies the objective.

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

Comment:

The applicant has provided revised shadow projections for the new roof line which demonstrate that the net impact on the shadow lines affecting neighbouring sites is not worse than the approved design.

The development satisfies the objective.

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

Comment:

Not applicable. The subject site is zoned R3 Medium Density Residential.

Zone objectives

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

The underlying objectives of the R3 Medium Density Residential zone:

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

Comment:

The proposal retains the residential use of the site to service the housing needs of the community in the medium density residential environment.

The development satisfies the objective.

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

Comment:

The proposal retains the approved housing types and densities in the locality.

The development satisfies the objective.

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

Comment:

Not applicable. The proposal retains the residential use of the site.

The development satisfies the objective.

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

Comment:

The proposal seeks to modify the approved development, which has been assessed to provide a suitable redevelopment of the site.

The development satisfies the objective.

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

Comment:

Not applicable. The proposal retains the residential use of the site.

The development satisfies the objective.

Conclusion:

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

Notwithstanding, Council is satisfied that the modified development is substantially the same development as previously approved and whilst no assessment against the objectives of Clause 4.6 is required it has been determined that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under MLEP 2013 and the variation can be supported on its merit.

Manly Development Control Plan

Built Form Controls

The proposed modifications do not alter the development's approved compliance with the built form controls under Part 4 of the Manly DCP 2013.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.2 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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposed amendments to the approved design do not give rise to additional amenity impacts to the neighbouring sites, or surrounding area. The proposed changes do not alter the perceived bulk and scale of the building, and are consistent with the approved style that is not visually dominating or overbearing to the Victoria Parade streetscape. As such the proposal continues to complement the identified streetscape.

The development satisfies the objective.

3.4.2 Privacy and Security

The proposed amendments in relation to specific windows is considered to be consistent with the objectives under Part 3.4.2 Privacy and Security of Manly DCP 2013. However, as the windows changes have the ability to create additional amenity impacts the modified works have been assessed against the objectives of the control to ensure consistency.

The modified proposal includes the following window changes:

- Bedroom window in Units 1, 3 and 5 (W2) on the northwest elevation moved to suit new internal robe location,
- New window is to be installed in the rear elevation of bedroom 1 in Units 8 and 10 (W22 & W21) on the northwest elevation to comply with BCA requirements,

- One window in bedroom 2 of Units 7-10 (W4 & W5) on the northwest elevation is to be reduced in width from 900mm to 600mm,
- The window heads of Units 7-10 (W20 & W19) on the northeast elevation reduced to 2.4mm above floor level to align with the front facade,
- Two smaller windows (W20 & W21) on the northeast elevation in bedroom 1 of Units 7 and 9 are consolidated into one window
- The wall height between the rooftop plant areas and the roof terraces is to be increased in height by 600mm to provide screening from plant areas to improve amenity.

Merit Consideration

The proposed modifications are considered against the relevant objectives of the control:

- ***To minimise loss of privacy to adjacent and nearby development by: appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.***

Comment:

There is no change to the approved setbacks of the proposal, nor to the approved privacy screens on areas where direct overlooking can occur. The proposals window changes are mainly from bedroom windows where overlooking is less objectionable than overlooking from a living room where people tend to spend more waking time. Therefore, it is not considered additional privacy treatments are not required for the amended windows.

As a result, the modified works will not create unnecessary amenity impacts due to the bulk, scale or separation.

The proposal satisfies this objective.

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

Comment:

The proposed amendment are considered consistent with the objective of the control as there is not change in the setbacks of the building, and no substantial change in the perceived bulk of the building. The proposed amendments do not decrease the existing approved levels of privacy, and improves the internal amenity. The amendments continue to balance access to light and air for the subject site with amenity of adjacent sites.

The proposal satisfies this objective.

- ***To encourage awareness of neighbourhood security.***

Comment:

The development does not change the awareness of neighbourhood security.

The proposal satisfies this objective.

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

3.4.3 Maintenance of Views

Potential view loss from the additional two floors of the residential flat building has been assessed in the previous approved application and subsequent modifications.

During the notification of the current modification application, there were no submissions received raising concern in relation to the view loss from the amended proposal.

The impact upon the views could potentially be from the additional height non-compliance of the roof line via enclosing the private stairways to the roof terraces. However, whilst there is additional height non-compliance from the stair enclosure, submitted documentation demonstrates that this element will additionally not obstruct any view from the surrounding apartments.

The stairway enclosure would not be readily visible when viewed from the public domain in Victoria Parade and should not have any detrimental visual impact when viewed from neighbouring properties, particularly as the 9 story Royal Far West development approved by the Planning Assessment Commission of NSW on 18 April 2013 will be much larger, blocking any view lines in this area.

Consequently, the amended development minimises the impact of the enclosure of the stairwell through design features, and is not shown to demonstrate unreasonable view loss, consistent with the planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004)* NSWLEC 140.

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

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

Description of Non-compliance

While there are no proposed amendments to the approved Ground Floor, Level 1, 2, 3 or 4, wall heights or side setbacks of the building, there are amendments to the wall heights of two roof terrace elements, being the new roof enclosure over the access stairs, and the privacy walls.

As a result the amendments proposed are not compliant with the maximum building height development standard set by Clause 4.3 Height of Buildings of the MLEP 2013, nor the building height development controls of the MDCP 2013.

Clauses 4.1.2.1 and 4.1.2.2 rely on the objectives of Clause 4.3 Height of Buildings of the MLEP 2013 and have been assessed below.

4.1.2.1 Wall Height

The proposed amendments are inconsistent with the previously approved maximum wall height. The proposal amendments include a 0.60m increase to the wall height of the roof terrace privacy walls (RL22.60 to RL23.20) and a 1.01m increase in the wall height from the enclosed access stairs (RL23.2 to RL24.21).

However, it is noted that the proposed roof form, and privacy walls satisfies the underlying objectives of Clause 4.3 Height of Buildings under MLEP 2013 and the variation can be supported on its merit. Furthermore, the non-compliance, which is limited in area, does not give rise to any unreasonable impacts upon adjoining properties or attribute to excessive bulk and scale.

4.1.2.2 Number of Storeys

The proposed development comprises five (5) storeys, inconsistent with the three (3) storey limit prescribed by this development control. However, there is no change to the number of stories as part of this modification. The changes to the roof terrace privacy walls, and roof area over the access stairs to the roof terraces are elements within the approved Roof Level. As a result, the presentation of the residential flat building is consistent with the previously approved proposal and character of surrounding built form.

Overall, despite further non-compliance with the wall height, the proposed development is considered to be consistent with the relevant objectives, as follows:

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

Comment:

The proposed stairway enclosure is not visually prominent to the Victoria Place street view, minimising potential visual building bulk and amenity impacts. The stairway enclosure is to be raked from the Victoria Parade frontage, and the new maximum building height breach is a distance of approximately 4.5m from the sites' Victoria Parade frontage. The spatial distance, elevation, raked slope and use of a recessive coloured roofing material, ensure the additional building height is not visually prominent and is consistent with the approved built form context, the Victoria Street area and the surrounding Manly locality.

The privacy walls between the rooftop terraces are centrally located within the Roof Level, with a sufficient spatial distances to the neighbouring sites. As a result these walls will not be readily seen, or visually predominate, from the public domain in Victoria Parade and do not create unreasonable visual impact when viewed from neighbouring properties.

The development satisfies the objective.

- ***To control the bulk and scale of buildings.***

Comment:

The previously approved five (5) storey proposal, with roof terrace areas, continues to be consistent with surrounding built form and the bulk and scale of the proposed development is appropriate in the context.

The development satisfies the objective.

- ***To minimise disruption to the following:***

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

Comment:

The additional areas of non-compliant wall height from the privacy walls, and enclosed staircase does not result in any unreasonable impacts upon views to/from adjoining properties or the public domain. The proposed works will not be readily visible from the Victoria street view, are considered to be an aesthetic improvement to the existing built form and a functional improvement to the approved development, such that it would not result in any adverse visual impact.

The development satisfies the objective.

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

Comment:

The proposed amendments to the roof terrace elements do not result in unreasonable impacts upon solar access to adjoining development.

The development satisfies the objective.

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

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

Description of non-compliance

The proposed modifications include new works (including the enclosure of the access stairs, and increase in the height of the privacy walls on the roof terrace) which will sit within the approved setbacks for the proposed residential flat building. See Figure 4 below.

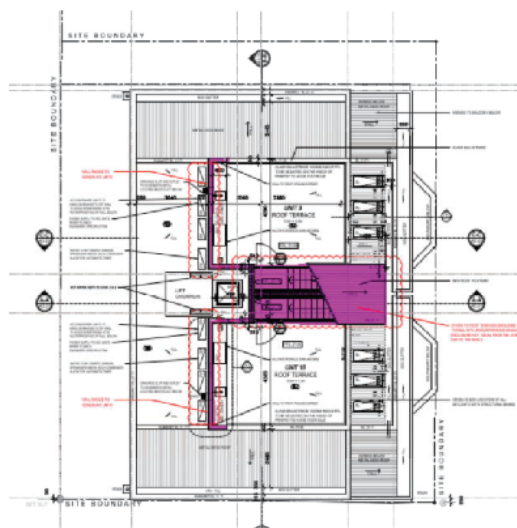


Figure 4. Amended elements shown in pink within the existing approved building footprint.

Whilst there is no change to the proposed setbacks of the privacy walls, and enclosure of the access

stairs, there is additional height to these elements which have been assessed against the objectives 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 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 works will not be visible from Victoria Parade, nor the existing adjoining residential properties. The proposed roof structure will have minimal visual impact on the neighbouring properties and is not considered compromise the existing streetscape of Victoria Parade.

The development satisfies the objective.

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

Comment:

The proposed roof structure amendments will not provide any adverse impact on any views in this location. In addition, there is a spatial separation of approximately 2.9m from the privacy walls, and 7.4m from the enclosure of the stairs to the north-east and south-west neighbour ensuring there is no adverse impact in relation to light or air movement. In terms of privacy, the new roof form and privacy walls actually improve the privacy levels of the internal occupants, and surrounding properties.

The development satisfies the objective.

- ***To promote flexibility in the siting of buildings.***

Comment:

The roofing area to enclose the access stairs is not visually prominent to the Victoria Place street view, minimising potential visual building bulk and amenity impacts. The stairway enclosure is to be raked from the Victoria Parade frontage, and the new maximum building height breach is a distance of approximately 4.5m from the site's Victoria Parade frontage. The spatial distance, elevation, raked slope and use of a recessive coloured roofing material, ensure the additional building height is not visually prominent and is consistent with the approved built form context, the Victoria Street area and the surrounding Manly locality.

The privacy walls between the rooftop terraces and plant areas, to screen the plant area from the terraces, is centrally located within the Roof Level, with a reasonable side setback distances. As a result these walls will not be readily seen or visually predominate from the public

domain in Victoria Parade and are do not create unreasonable visual impact when viewed from neighbouring properties.

The development satisfies the objective.

- ***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 modification works do not impact on the approved landscape areas of the site.

The development satisfies the objective.

- ***To assist in appropriate bush fire asset protection zones.***

Comment:

The site is not bushfire prone.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

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

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

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

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

This Section 4.55 Modification Application has been assessed having regard to the Environmental Planning and Assessment Act 1979, the MLEP 2013, MDCP and the relevant codes and policies of Council.

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

The amendments to the proposal and new documentation have presented a reasonable design that is compatible with the existing approved built form, suitable with the existing site and the future character of the Manly locality.

The critical concerns relating to the the additional building height variation from the new roof over the external access stairs, and the increase in height of the terrace privacy walls, have been addressed by documentation submitted with the application that can reasonably demonstrate that the proposal is consistent with the objectives of the MLEP 2013, does not create unreasonable amenity impacts to the adjoining properties, and achieves consistency with the desired future character of the locality.

In this case, the proposed roofing over the external stairs provides a more appropriate solution for all weather access, and water drainage. With the privacy wall design allowing greater internal amenity for the residents. Changes to the windows, and internal changes are located so as not to create direct overlooking, provide better internal amenity for the occupants access to light and ventilation, while retaining an adequate level of privacy for the subject site and adjacent sites.

Both Councils' Heritage Advisor and Urban Designer supported the proposed changes. Councils' Heritage Officer is in agreeance that the modified design will not have an adverse impact upon the heritage significance of the building, nor the heritage item nearby. Councils' Urban Designer also agrees that the proposed modifications will not have unreasonable impact on views, nor an increased impact on the overall bulk and scale of the approved building. As a result, the modified works are acceptable and continue to be compatible with the surrounding area and the Manly Locality.

Two (2) 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.

On balance, the proposal should be approved as the design displays reasonable scale and density compatible with the surrounding development. Therefore, proposed amendments made under this modification application are considered reasonable for the subject site and locality.

Accordingly, the application is referred to the Development Determination Panel with a recommendation for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0062 for Modification of Development Consent DA384/2009 granted for Alterations and additions to an existing four 4 storey Residential Flat Building on land at Lot CP SP 11799,31 Victoria Parade, MANLY, subject to the conditions printed below:

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

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

The plans and documents listed in the "Notice of Determination" on 30 August 2010 in relation to DA384/2009, as modified by plans and documents listed in the following:

- Notice of Determination on 8 March 2012 in relation to DA384/2009 – Part 2,
- Notice of Determination on 3 March 2013 in relation to DA384/2009 – Part 3,
- Notice of Determination on 26 June 2016 in relation to DA384/2009 – Part 4,
- Notice of Determination on 12 April 2018 in relation to DA384/2009 – Part 5;
- Notice of Determination on 12 July 2019 in relation to MOD2019/0013, as modified by:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Ground Floor Plan A1.01	17/03/2020	Platform Architects
Level 1 Plan A.102	17/03/2020	Platform Architects
Level 2 Plan A1.03	17/03/2020	Platform Architects
Level 3 Plan A1.04	17/03/2020	Platform Architects

Level 4 Plan A1.05	17/03/2020	Platform Architects
Roof Plan A1.06	17/03/2020	Platform Architects
South-East Elevation A2.01	17/03/2020	Platform Architects
South-West Elevation A2.02	17/03/2020	Platform Architects
North-East Elevation A2.03	17/03/2020	Platform Architects
North-West Elevation A2.04	17/03/2020	Platform Architects
Section A-A A3.01	17/03/2020	Platform Architects
External Finishes South-East Elevation Issue B	17/03/2020	Platform Architects
External Finishes South-West Elevation Issue B	17/03/2020	Platform Architects
External Finishes North-East Elevation Issue B	17/03/2020	Platform Architects
External Finishes North-West Elevation Issue B	17/03/2020	Platform Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Conservation Management Report	17/3/2020	Blackmore Design Group

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

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

B. Add Condition Amendments to the Approved Plans - External Materials and Finishes to read as follows:

The proposed metal material for the Front Door is not approved.

The Front Door materials must remain as the previously approved timber Front Door. All plans are to be amended to remove the reference to the metal Front Door and replaced with the reference to the previously approved timber Front Door.

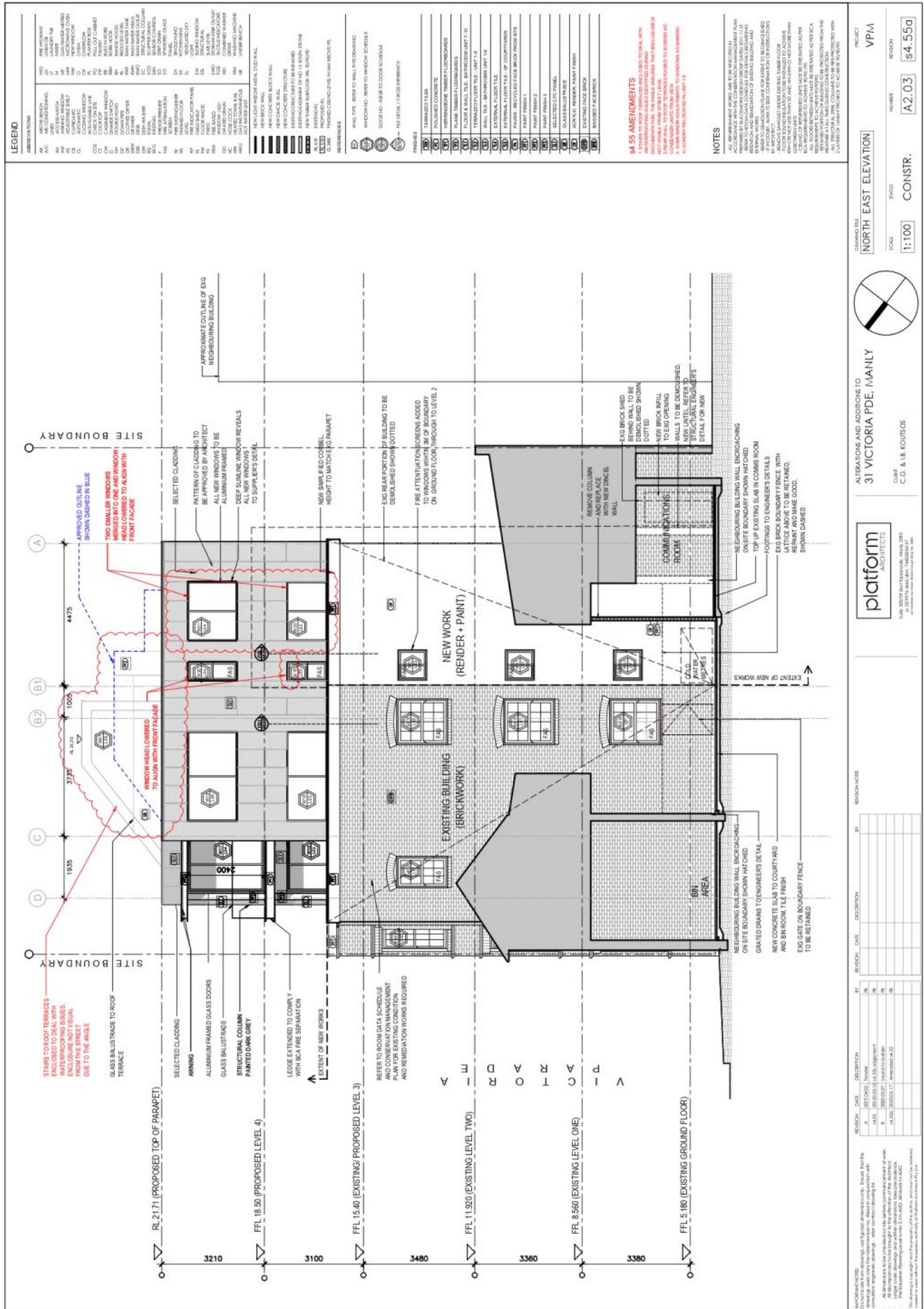
Details demonstrating compliance are to be shown on the construction certificate plans to the satisfaction of the Certifying Authority.

Reason: To preserve the heritage significance of the heritage item.











ITEM 3.2	DA2020/0214 - 20 PALM BEACH, PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Matthew Edmonds
TRIM FILE REF	2020/321779
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 **approve** Development Consent to DA2020/0214 for alterations and additions to a dwelling house on land at Lot A DP 342891, 20 Palm Beach Road, Palm Beach, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0214
Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot A DP 342891, 20 Palm Beach Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Paul Joseph Meehan
Applicant:	Michael Robilliard & Associates
Application Lodged:	06/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/03/2020 to 01/04/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 20.8%
Recommendation:	Approval
Estimated Cost of Works:	\$ 278,300.00

EXECUTIVE SUMMARY

The development application seeks consent for the alterations and additions to a dwelling house that involves a 20.8% variation to the height of buildings development standard prescribed by clause 4.3 of the *Pittwater Local Environment Plan 2014 (PLEP 2014)*. As such, the development is referred to the Development Determination Panel for determination.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the alterations and additions to a dwelling house. In particular, the works include:

- Demolition of the skillion roof form which sits over the south eastern corner of the building and

- the replacement with a vaulted roof form;
- A bedroom within the roof area due to increased head heights within the roof space; and
- Changes to glazing, including new windows at the attic level.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D12.3 Building colours and materials
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot A DP 342891 , 20 Palm Beach Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site is known as 20 Palm Beach Road, Palm Beach and is legally referred to as Lot A DP 34291. The site consists of one (1) allotment located on the eastern side of Palm Beach Road.</p> <p>The site is irregular in space with a frontage of 20.7m along Palm Beach Road and a depth of 31.5m. The site has a surveyed area of 524.8m². Pedestrian and vehicular access is gained via the Palm Beach Road frontage.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two (2) to three (3) storey dwelling house located towards the front of the site.</p>

	<p>The slope of the site is 22.3%, falling 7m from the road frontage to the rear boundary.</p> <p>The site contains a modified landscaped setting, with vegetation consisting of a low-lying shrubs, a sloping lawn area to the rear, palms as well as a number of native canopy trees including Tuckeroo's.</p> <p>The site is mapped within the Pittwater Geotechnical Hazard Map.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses of varying architectural styles and ages within landscaped settings.</p>
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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:

16 June 2008

Development Application No. N0690/07 for the demolition of existing dwelling and construction of a new two storey timber and brick dwelling with a vaulted copper roof was refused by Council's Development Unit.

The Development Application has been refused for the following reasons:

1. Non-compliance with controls and outcomes of Section D12.5 – front building line of Pittwater 21

DCP.

2. Non-compliance with the controls and outcomes of Section D12.6 – side and rear building line of Pittwater DCP with respect to the southern side setback.

1 September 2008

A review of Council's determination to Development Application No. N0690/07 under Section 82A of the Environmental Planning and Assessment Act 1979 resulted in the granting of consent.

9 September 2010

Section 96(1A) Modification Application No. N0690/07/S96/1 to Development Application No. N0690/07 was granted consent.

5 September 2019

Development Application No. DA2019/0827 for alterations and additions to a dwelling house including swimming pool and spa was granted consent.

APPLICATION HISTORY

16 March 2020

Site inspection undertaken by the development assessment officer. No property owners were present at the time of the inspection.

8 April 2020

Photo evidence provided to Council of the notification sign being installed for the duration of the notification period.

28 May 2020

Site inspection undertaken by the development assessment officer from 16 Palm Beach Road, Palm Beach to assess concerns raised relating to solar access and privacy. An architect representing the property owner was also present at the time of the inspection.

28 May 2020

Revised architectural plans submitted to more accurately demonstrate the ground level (existing).

27 May – 29 May 2020

Email and phone correspondence between the development assessment officer and the applicant to clarify the extent of the height breach as detailed within the Clause 4.6 variation request as well as the extent of shadowing impact.

29 May 2020

Amended Clause 4.6 variation request submitted detailing the proposed building height being 10.27m

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>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be 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 can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration'	Comments
of the site for the development	
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
U+I Building Studio	Po Box 28 FAIRLIGHT NSW 2094

The following issues were raised in one (1) submission and each have been addressed below:

- Loss of privacy**

Comment:

The submission received on behalf of the adjoining property owner* to the south, raising concern with the loss of privacy to the living room and outdoor living area from the proposed enlargement to existing windows and from new windows (Figure 1). Based on the submitted plans, the proposed east facing windows is at a distance greater than 9 metres in distance from the neighbours private open space areas including swimming pools and living rooms. These proposed upper floor windows are also orientated eastwards thereby avoiding direct views to No. 16 Palm Beach Road. Established vegetation including trees, palms and hedging further assist to obscure overlooking. As such, the proposal is seen to comply with the control requirements of C1.5 Visual Privacy of the Pittwater 21 DCP and is not recommended for refusal on this basis.



Figure 1. Looking north towards from the courtyard area near the swimming pool of No. 16 Palm Beach Road.

- **Loss of solar access**

Comment:

Concerns were also raised on behalf of the south adjoining property concerning the extent of overshadowing in winters from the proposed development towards the ground floor living room and the adjoining areas of open space (garden grass area & swimming pool). While 3D shadow diagrams were submitted at lodgement, the applicant during the assessment provided 2D shadow diagrams (Figure 2 and 3) demonstrating the additional shadowing cause by the proposed development. Whilst the swimming pool at 16 Palm Beach Road is indicated to be partially overshadowed at 3pm on the 21 June (winter solstice), a minimum of 3 hours of sunlight between 9am and 3pm will be maintained. The shadow diagrams also indicates that the windows of the ground floor living area will not be impacted by shadowing resulting from the proposed development. As such, the proposal is seen to comply with the control requirements of C1.4 Solar Access of the Pittwater 21 DCP and is not recommended for refusal on this basis.



Figure 2. Shadows cast at 12pm on 21 June. Source: Michael Robilliard & Associates



Figure 3. Shadows cast at 3pm on 21 June. Additional shadowing marked in red. Source: Mi

***Note:** U+I Building Studio provided a submission on behalf of the property owner of 16 Palm Beach Road, Palm Beach.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	The submitted Geotechnical report certifies that an acceptable risk is achievable for the development. No objection to approval, subject to conditions.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A363355_02, dated 28 February 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.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.27m	20.8%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.27m
Percentage variation to requirement:	20.82% (1.77m)

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

(3) Development consent must not be granted for development that contravenes a development

standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The proposed modified roof form at the rear of the dwelling will be located over the existing building footprint and will provide a bulk and scale which is in keeping with the existing building and surrounding development, with a palette of materials and finishes which is consistent with the existing dwelling, in order to provide for high quality development that will enhance and complement the locality.
- The proposed modified roof form is of the same colours and finishes as the existing building which are recessive and are not dominate in the view of the site.
- The existing building responds to the natural topography with only a small encroachment of the roof over the 8.5 metre height limit as shown on the drawings. The proposal seeks to emulate the same shape, form and height and therefore will encroach the height limit to a similar extent.
- Lowering the whole of the building is not possible to enable compliance due to the established building platform and would substantially increase the extent of excavation and disrupt the compatible levels between the ground floor level and the level of the rear yard. Pushing the roofline back so that it complies would be out of alignment with the other vaulted roof and not be a good urban design outcome.
- The new modified roof exceeds the height control in the same area of the site due to the drop in the topography below.
- Notwithstanding the non-compliance of the proposed dwelling with the maximum overall height the new roof form will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. The siting of the proposed development will mitigate any adverse impacts of overshadowing and loss of views for any neighbouring properties.
- The proposed alteration to the roof will not result in the loss of any landscaped area around the dwelling as the proposal is confined to the footprint of the building.

It is accepted that despite the variation to the building height development standard, that the breach relates to an area of the site that has the lowest topography. Moreover, it is recognised that the proposed development will be compatible to the bulk and scale of neighbouring dwellings within the locality. Consideration is also given that the proposed modified roof form emulates a similar height,

shape and materially to compliment the vaulted roof design of the existing dwelling. In this regard, the proposed development is anticipated to be of an appearance as an attic space within a roof structure. Acknowledgement is given that the additions are to be located over the existing building footprint and therefore will not result in the removal or any landscaping or require excavation on site. It is further accepted that the building height breach will not give rise to an unacceptable impact on the amenity of adjoining or adjacent properties in terms of solar access, views, visual bulk or privacy.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed development is seen to be technically inconsistent with the desired character for dwelling houses to remain a maximum of two storeys in any one place. The addition is expected to appear as an attic space within a roof structure and, with the retention of established trees and palms not immediately discernible as a third storey from the rear of the property. Further, when viewed from the frontage of Palm Beach Road, the dwelling house will continue to present as one-two storeys. The proposal modified roof form equally is seen to respect the massing of the existing built form, through a consistency in design and scale to the present vaulted roof design of

the dwelling house. Consideration has also been given that the proposed development which incorporates glazed areas and a zinc metal roof will harmonise with the natural environment. Limiting the works to an area over the existing building footprint also minimises site disturbance. It is therefore considered that the development is consistent with the desired future character of the Palm Beach Locality.

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

Comment:

The proposed development demonstrates compliant setbacks that provide adequate separation between adjoining dwellings, as well as areas to maintain landscaping. The design also utilises recessive features, materials, finishes and a roof form that assist with minimising the overall visual prominence of the development. Whilst a portion of the proposed development exceeds the building height development standard, it should be acknowledged that examples of contemporary residences surrounding the site are of a considerable bulk and scale that appear as three storeys when viewed from the lower parts of these properties. The proposal is therefore considered to remain compatible with the height and scale of surrounding and nearby development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

Despite the submitted shadow diagrams indicating that the swimming pool area at 16 Palm Beach Road being partially overshadowed at 3pm on the 21 June (winter solstice), a minimum of 3 hours of sunlight between 9am and 3pm will be maintained resulting in the proposal being seen to comply with the control requirements of C1.4 Solar Access of the Pittwater 21 DCP. Notwithstanding this, consideration is also given that this private open space area is quite vulnerable given it is directly south of the proposed development. Furthermore existing shadowing impacts from established trees and palms between 16 Palm Beach Road and the subject site do not form part of Council's assessment of access to sunlight.

d) to allow for the reasonable sharing of views,

Comment:

The proposed development is considered to allow for the reasonable sharing of views through demonstrating that ocean and beach views from residences on the upper side of Palm Beach Road will not be obscured. The resultant development is anticipated to fall mostly below the level of the tree canopy when viewed from these residences. Whilst no objections were received with regards to view loss, the submitted plans reasonably demonstrates that view sharing is achieved.

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

Comment:

As a result of the proposed works being limited to an area over the existing building footprint, no excavation is required. Further, the application has been submitted with a Geotechnical Report, which has been reviewed by Council's Development Engineer who is supportive of this proposal in this regard. The recessive architectural design and finishes results in this development being

considered as responding sensitively to the natural topography.

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

Comment:

The subject site is not a listed heritage item and is not in the vicinity or buffer area of any listed heritage items. The retention of established trees and palms as well as the use of glazing and zinc roofing that is expected to fade over time, ensures that visual impacts resulting from the proposed development are minimised.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

Whilst the subject site is not indicated as containing endangered ecological communities, or as an area of habitat mapped for flora or fauna conservation, consideration is given that the site falls under the Scenic Protection - Cat 1 mapping. In this regard, the application has demonstrated the retention of existing vegetation including canopy trees on site as well as the use of external finishes that help blend the development into the natural environment. The proposed development is therefore considered to provide for an acceptable low-impact residential development that responds sensitively to the relevant ecological, scientific and aesthetic values as they relate to the land.

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

Comment:

In order to ensure the development does not have an adverse effect on the above-mentioned values, conditions have been placed to ensure that existing trees including those between the dwelling and rear boundary on site are retained. Further, where the proposal has been identified as being non-compliant with control requirements, the assessment has shown that the application has satisfied the relevant outcomes of these controls.

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

Comment:

As previously discussed within this report, the proposed development has been considered to provide for a compatible density and scale to surrounding contemporary dwellings within this area of Palm Beach. Further, the development has not been seen to result in an unacceptable impact on the amenity of adjoining or adjacent properties in terms of solar access, views, visual bulk or privacy. Should the application be approved, a condition has been recommended for a survey certificate is submitted at various stages of the construction to ensure the building height and setbacks are consistent with the submitted architectural plans. The proposal also does not require excavation of the land or removal of landscaping on site.

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

The subject site is not located within an area containing riparian and foreshore vegetation or wildlife corridors, however as previously discussed, appropriate protection measures are placed to ensure the tree canopy of the area is maintained

Conclusion:

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

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	13.6m	-	Yes
Rear building line	6.5m	10m	-	Yes
Side building line	2.5m	9m (North)	-	Yes
	1m	2.4m (South)	-	Yes
Building envelope	3.5m	North - Within envelope	-	Yes
	3.5m	South - Outside envelope by 800mm to underside of eave, 3.2m to roof ridge	11.5%-46%	No
Landscaped area	60%	36%	40%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	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
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D12.3 Building colours and materials

The proposal seeks the use of unpainted zinc roofing to match the sheet metal roof of the existing

dwelling. Whilst new zinc roofing can initially be reflective at the time of installation, patina typically forms to dull the finish over time. The proposed colours and materials as indicated on the external finishes schedule is therefore considered to be compliant with the control requirements.

D12.8 Building envelope

The proposed development is not within the prescribed building envelope and is therefore non-compliant with the control. Despite the control permitting roof eaves extending outside the building envelope, in acknowledgement that the roof area is for a habitable room, the proposed development has been considered to breach the building envelope by 3.2m (46%) when measured to the roof ridge and 800mm (11.5%) when measured to the underside of the eaves. While the breach is applicable for the majority of the southern elevation, the extent is significantly reduced to the front portion of the dwelling facing Palm Beach Road. Consideration should be given that the curvature of the roof form reduces the degree of impact associated with the non-compliance. The variation sought for the proposed development do not result in an unreasonable impact to neighbouring properties with regard to views, privacy and solar access. Furthermore, the proposal is seen to be consistent with the desire future character of the locality. Visual impacts on the streetscape are limited when viewed from the Palm Beach Road frontage, due to the sloping topography of the site. The retention of canopy trees, palms and vegetation along the setback areas further limit the built form of the proposed development.

Based on the above, the variation to the control is supported on merit and considered to satisfy the outcomes of the control.

D12.10 Landscaped Area - Environmentally Sensitive Land

Landscaped Area requirement: 60% of the site area (314.88m²)
Landscaped Area proposed: 36% of the site area (188.6m²)

The proposed development is technically non-compliant with the control that requires 60% of the site to be landscaped. The proposal seeks to vary this control, reducing the overall total landscaped area to 36%. It must be noted however that the proposal does not seek the removal of any landscaping and does not result in an increase to the hard surface areas on site. Further, the recently issued development consent DA2019/0827 for a swimming pool on the site authorised a variation to the 60% landscaped area requirement demonstrating that in that instance, the outcomes of this clause were achieved. Notwithstanding this, consideration has been given that outcomes to ensure the preservation of the areas bushland character and biodiversity have been achieved through the retention of existing vegetation and canopy trees on site. The existing plantings also assists to visually reduce the built form of the development when viewed from neighbouring properties and the road frontage. The proposal is also considered acceptable with regard to stormwater run-off and the infiltration of water with Council's Development Engineer raising no objection to the application subject to conditions. Furthermore, the proposal is not seen to result in an unreasonable impact on the amenity and solar access provided to neighbouring properties.

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

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 \$2,783 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$278,300.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2020/0214 for Alterations and additions to a dwelling house on land at Lot A DP 342891, 20 Palm Beach Road, PALM 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
428 WD 01 (Site Plan)	28 May 2020	Michael Robilliard & Associates
428 WD 04 (Attic Floor)	28 May 2020	Michael Robilliard & Associates
403 WD 11 (Sections)	28 May 2020	Michael Robilliard & Associates
428 WD 13 (North Elevation)	28 May 2020	Michael Robilliard & Associates
428 WD 14 (East Elevation)	28 May 2020	Michael Robilliard & Associates
428 WD 15 (South Elevation)	28 May 2020	Michael Robilliard & Associates
428 WD 16 (West Elevation)	28 May 2020	Michael Robilliard & Associates
428 WD 91 (Demolition Plan)	28 May 2020	Michael Robilliard & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment Report Ref. AG 19104	1 July 2019	Ascent Geotechnical Consulting

BASIX Certificate, Ref. A363355_02	28 February 2020	Michael Robilliard & Associates
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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Minimisation and Management Plan	No date	Michael Robilliard & Associates

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 \$2,783.00 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 \$278,300.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **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 ASCENT Geotechnical consulting dated 1st July. 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. **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.

8. Compliance with Standards

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**9. Tree trunk, branch and root protection**

(a) Existing trees which must be retained

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

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by the Project Arborist on site.
- iii) All tree protection to be in accordance with the approved Tree Protection Plan 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 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**10. Road Reserve**

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

Reason: Public safety.

11. 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.

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

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

13. **Stormwater Disposal**

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

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

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

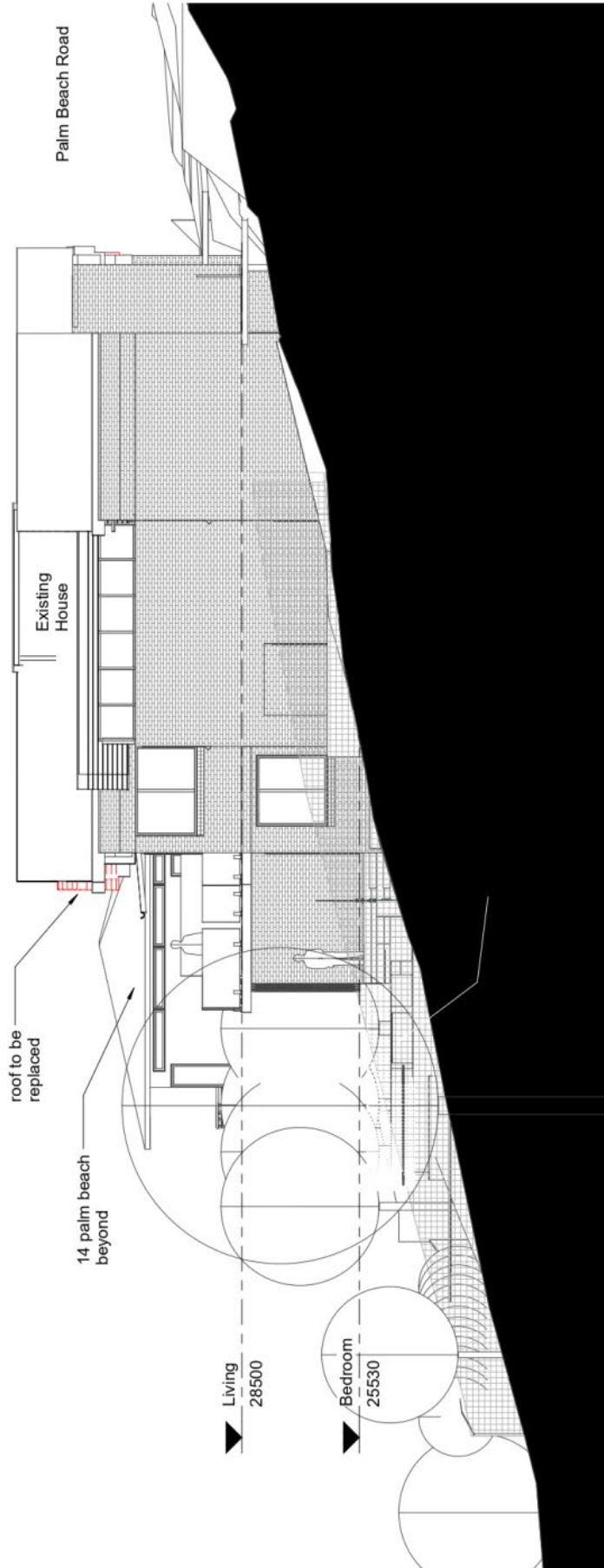
**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

14. **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.





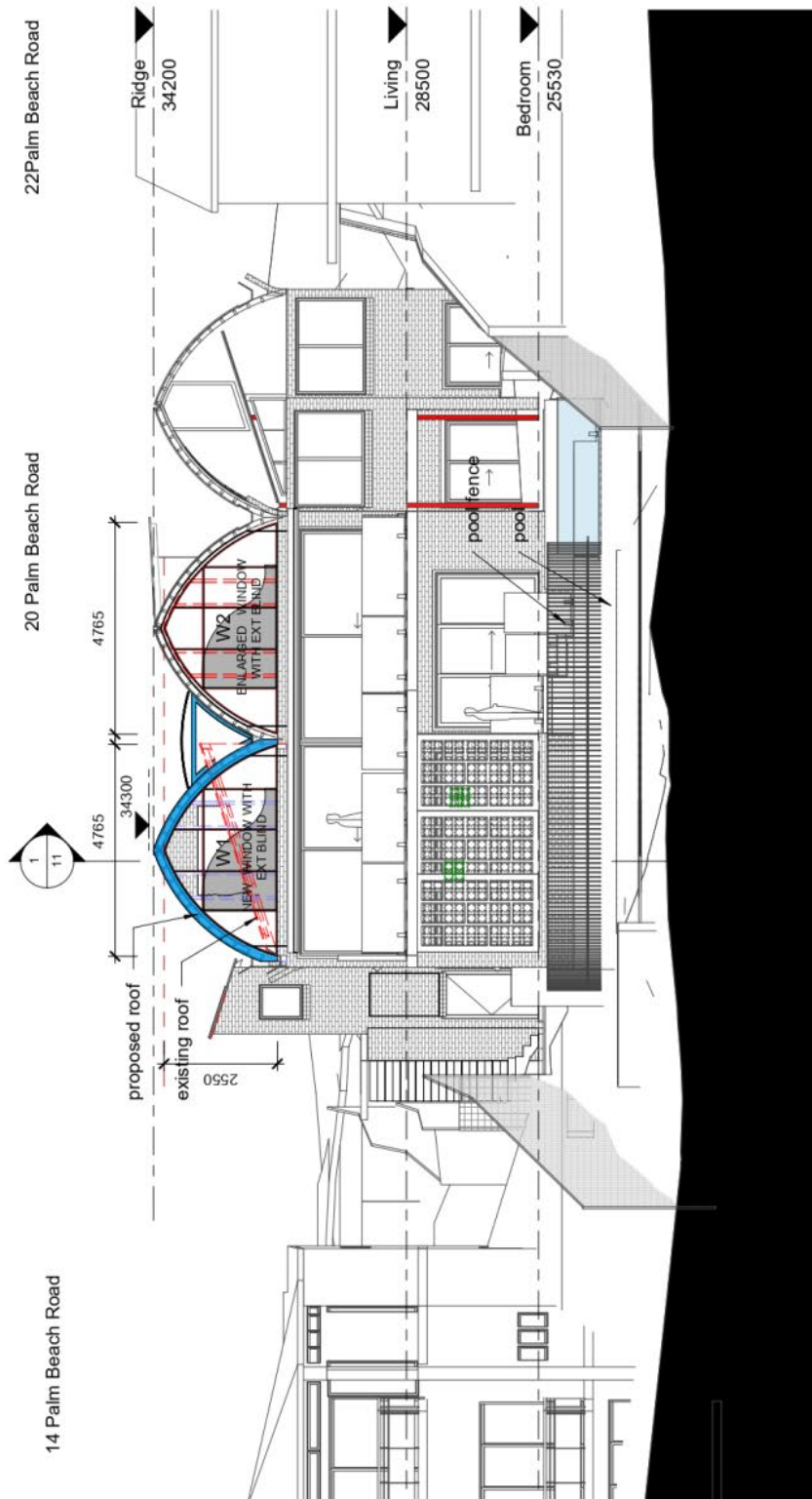
North Boundary Elevation

2

1 : 100

PROPOSED MEEHAN HOUSE	DRAWING North Elevation	MICHAEL ROBILLIARD & ASSOCIATES	
SITE ADDRESS 20 Palm Beach road ,Palm Beach	64 Goodhope Street, Paddington NSW 2021 Tel: 0011 2322 Fax: 0011 2322		
DATE 28-May-20 3:38:12 PM	SCALE 1 : 100	428 WD 13	

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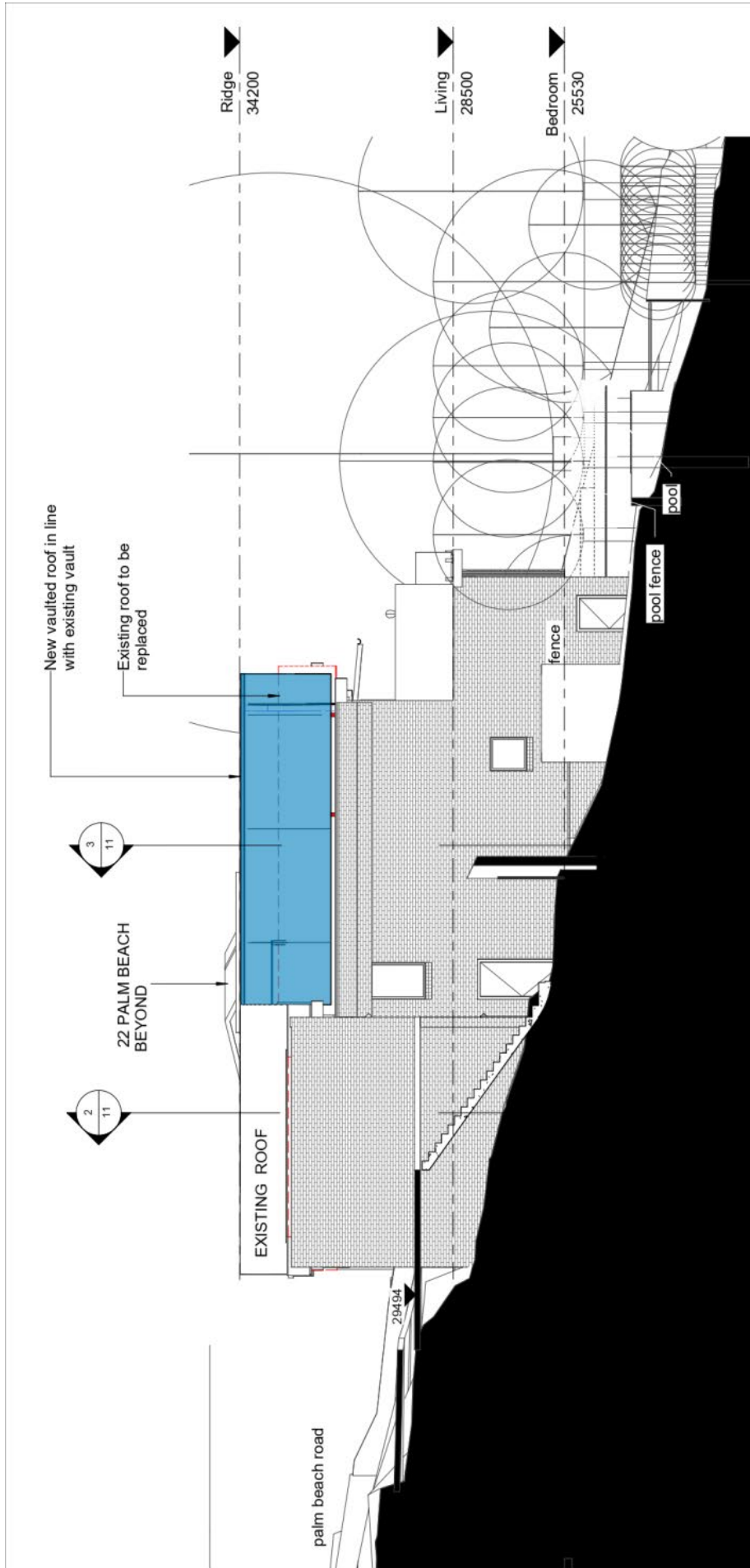
East Boundary Elevation

1

1 : 100

PROPOSED MEEHAN HOUSE	DRAWING East Elevation	MICHAEL ROBILLIARD & ASSOCIATES	
SITE ADDRESS 20 Palm Beach road ,Palm Beach	64 Goodhope Street, Paddington NSW 2021 Tel: 0011 7202		
DATE 28-May-20 3:38:17 PM	SCALE 1 : 100	428 WD 14	

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South Boundary Elevation

1

1 : 100

PROPOSED MEEHAN HOUSE	DRAWING South Elevation	MICHAEL ROBILLIARD & ASSOCIATES	
SITE ADDRESS 20 Palm Beach road ,Palm Beach	64 Goodhope Street, Paddington NSW 2021 Tel: 0011 7202	428 WD 15	
DATE 28-May-20 3:38:19 PM	SCALE 1 : 100		

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PROPOSED MEEHAN HOUSE	DRAWING West Elevation	MICHAEL ROBILLIARD & ASSOCIATES	
SITE ADDRESS 20 Palm Beach road ,Palm Beach	64 Goodhope Street, Paddington NSW 2021 Tel 9551 7322 Fax 9517 2661 E	DATE 28-May-20 3:38:22 PM	SCALE 1 : 100
			4:28 WD 16

INGHAM PLANNING PT LTD

1

REQUEST FOR A VARIATION TO DEVELOPMENT STANDARD**CLAUSE 4.3 MAXIMUM BUILDING HEIGHT PURSUANT TO
CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN
2014****ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING
AT 20 PALM BEACH ROAD, PALM BEACH.****MODIFIED ROOF FORM IN SOUTH EASTERN CORNER OF THE
SITE****1. Introduction**

Clause 4.6 of Pittwater Local Environmental Plan 2012 (PLEP2014) 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 proponent seeks approval for a new modified section of roof which is proposed in part, to extend above the maximum permitted building height of 8.5m. The subject land and neighbouring sites are steeply sloping, which has resulted in many dwellings exceeding the maximum height limit due to the topography of the land.

As detailed in this clause 4.6 submission, strict numerical compliance with the clause 4.3 maximum 8.5m building height is unreasonable and unnecessary in the circumstances and a better planning outcome is achieved, by supporting the requested variation. Notwithstanding the height encroachment, the proposal achieves the objectives of the building control applying to the site and the E4 Zone objectives, without impacting on neighbour amenity, the environment or the streetscape.

This assessment has taken into consideration judgements contained in Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11 and Samadi v Council of the City of Sydney [2014] NSWLEC 1199 and RebelHM Pty Ltd Neutral Bay v North Sydney Council [2019] NSWLEC 130.

2. The relevant development standard

Clause 4.3 of PLEP2014 sets out requirements in relation to height of buildings and prescribes a maximum building height of 8.5m for the subject land. Building height is measured as height above existing ground level, to the highest point of the building. The building height standard is designed to provide for a building scale of predominantly 2 storeys, with potential for an attic level above the second storey. The

predominant height of buildings within the immediate locality is 2 to 3 storeys.

The relevant objectives of this clause are;

4.3 Height of buildings

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

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

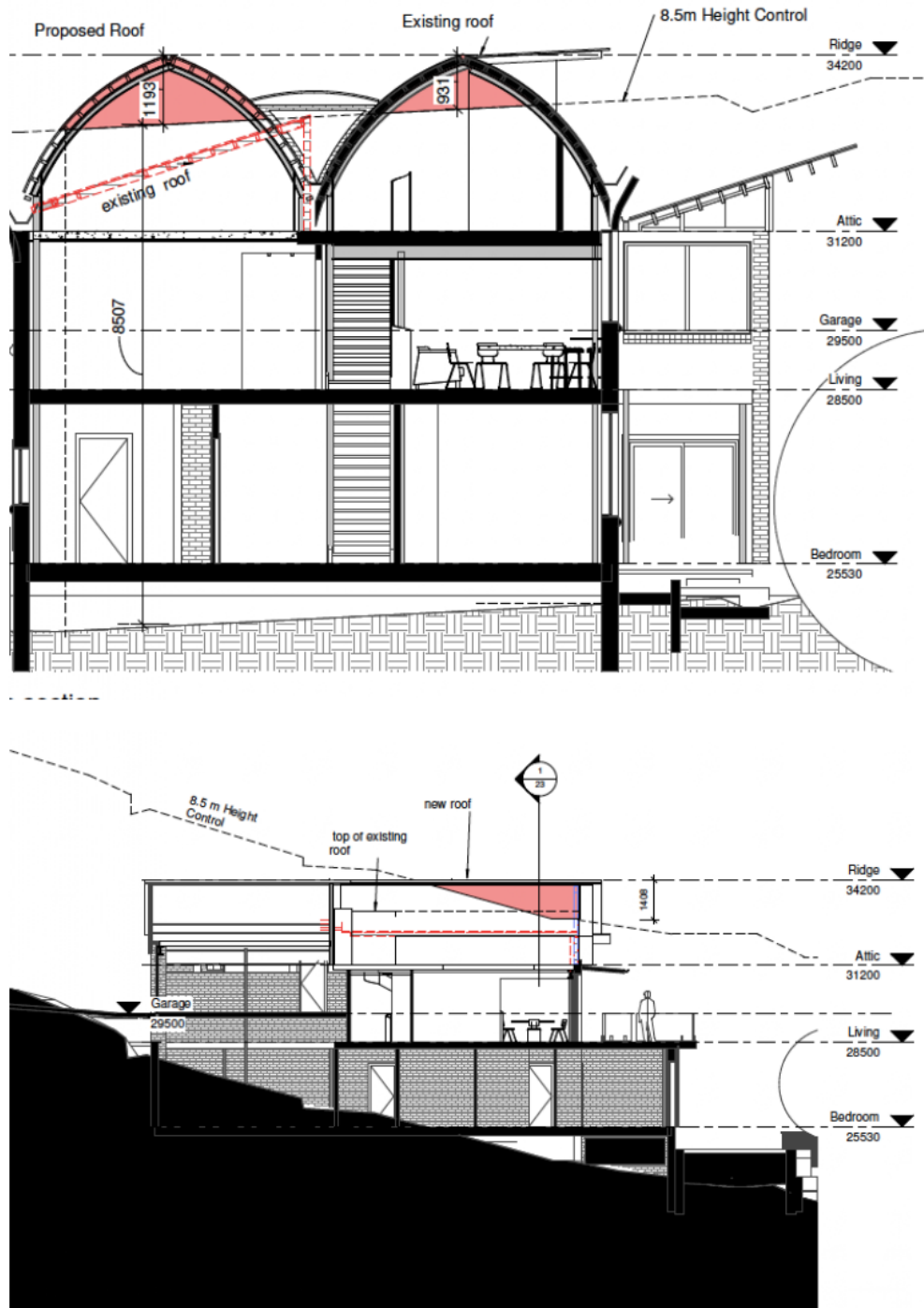
3. Requested variation to the standards

The proponent seeks an increase in maximum building height to allow for a maximum height of 10.27 metres. This occurs in the apex of the roof and is at the same height (RL) as the existing roof. Due to the topography, which falls from west to east with a fall of approximately 22%, the apex of the roof rises above the maximum height limit because the roof sits above the established building platform which in turn sits over the falling topography.

The greatest building height encroachment arises from the proposed apex of the roof as shown on the drawings. An extract of the drawings is provided in Figure 1 and Figure 2. The apex of the modified roof is located away from the side boundaries. The shape, height and form match the existing and distinctly shaped vaulted roof forms present on the dwelling. As shown in the Figures below, the new modified roof is to be a continuation of the existing roof. Therefore, to ensure architectural integrity, the same ridgeline RL must be carried through. As the roof reaches the rear of the dwelling where the land below falls away, the height exceeds the maximum 8.5 metre limit however it is consistent with the existing height of the vaulted roof of the dwelling.

The roof contributes to the character of this part of Palm Beach and the colours, materials and form are recessive in nature and reduce the prominence of the roof when viewed from afar. The proposal will integrate into the existing roofscape. The overall generally modest extent of height exceedance is illustrated in the drawing shown in red below, in Figures 1 and 2.

Figure 1 –Building Height Encroachment shown in section



Height long section1
1 : 100

Figure 2 – Building Height Encroachment shown in plan view.

4. Requirements of clause 4.6 – Exceptions to development standards

Objectives of clause 4.6

The objectives of clause 4.6 of the PLEP 2014 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for slightly increased additional floorspace within a modified roof form proposed at the rear of the site, which:

- complements the existing dwelling,
- increases amenity for the occupants,
- maintains all landscaped areas around the dwelling,
- is already largely screening by large trees which surround the site and when viewed from the east is screened by existing built forms and;
- does not result in adverse impacts to any surrounding property,
- is consistent with the stated objectives of the E4 Environmental Living Zone, which are noted as:

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

The proposed modified roof form at the rear of the dwelling will be located over the existing building footprint and will provide a bulk and scale which is in keeping with the existing building and surrounding development, with a palette of materials and finishes which is consistent with the existing dwelling, in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance of the proposed dwelling with the maximum overall height the new roof form will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. The siting of the proposed development will mitigate any adverse impacts of overshadowing and loss of views for any neighbouring properties.

5. That compliance with the development standard is unreasonable or unnecessary

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**.

Several decisions from the Land and Environment Court over recent years have provided guidance on how variations under Clause 4.6 of the Standard Instrument including *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* and *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*. This

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons which are a written response in addressing to (i) above.

The Public Interest***Consistency with zone objectives***

The proposal achieves the objectives of the E4 Environmental Living Zone. The zone objectives of the E4 Zone are noted and commented upon below:

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

The proposal is considered to be low key as it retains the use of the site as a single detached dwelling, the dwelling remains well screened from its neighbours by the retention of all perimeter plantings and retains a low profile on the slopes given its existing (and proposed) bulk, height and scale.

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

This assessment has concluded that the proposal will not have an adverse effect on these values. The proposal is a low density development within a landscaped site and is consistent with the locality.

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

The site will continue to support landscaping on and around its boundaries. The proposed modified roof form sits over the existing footprint of the dwelling.

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

The proposed modified roof form will have no impact upon foreshore vegetation and wildlife corridors.

Consistency with the objectives of the standard

The proposal achieves the objectives of the maximum building height control.

The objectives of the building height control are noted and commented upon in the following assessment.

The objectives for the height control are as follows:

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

The proposal achieves the above objectives as detailed in the following assessment.

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

The proposal is consistent with the existing height and scale of the existing building and that of the surrounding development. The dwelling is a maximum of two stories and is relatively modest in size when compared to many surrounding dwellings. The proposed alteration to the roof will not result in the loss of any landscaped area around the dwelling as the proposal is confined to the footprint of the building.

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

Building bulk, scale and height is similar to the existing established built form on the site and on surrounding dwellings. As a consequence, the dwelling will not be visually obtrusive in the streetscape, or as viewed from the eastern side (Ocean Avenue). The new modified roof will not be visually dominant when viewed from outside the site as it will be the same height as the current roof, which cannot be easily seen.

Proposed bulk and scale substantially accords with the bulk and scale anticipated by the development controls and is generally consistent with prevailing built form, particularly when measured against the newer dwellings in the locality.

- (c) to minimise any overshadowing of neighbouring properties,*

Shadow diagrams demonstrate that there is no unreasonable overshadowing as a result of the small encroachment.

- (d) to allow for the reasonable sharing of views,*

The proposal allows for the retention of views across the property. Refer to Figure 8 of the SEE.

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

The existing building responds to the natural topography with only a small encroachment of the roof over the 8.5 metre height limit as shown on the drawings. The proposal seeks to emulate the same shape, form and height and therefore will encroach the height limit to a similar extent.

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

The proposed modified roof form is of the same colours and finishes as the existing building which are recessive and are not dominate in the view of the site.

Compliance would result in a poorer planning outcome

One of the objectives of Clause 4.6 is to allow better planning outcomes to be achieved. In this case a substantially better planning outcome is achieved by allowing for some flexibility in relation to the building and wall height controls.

Locating the new floor area within a modified roof form which is wholly over the footprint of the building complements established building alignments, optimises landscaping on the site, maintains established streetscape and eliminates any increase in building footprint.

Relocating any of the proposed floor area to any other part of the site would reduce the landscaped area of the site or alter the generous front setback of the dwelling to the street.

Lowering the whole of the building is not possible to enable compliance due to the established building platform and would substantially increase the extent of excavation and disrupt the compatible levels between the ground floor level and the level of the rear yard. Pushing the roofline back so that it complies would be out of alignment with the other vaulted roof and not be a good urban design outcome.

Retaining the roof profile as it currently exists does not present an opportunity to increase the amenity of the attic space which can be achieved with minimal gain in terms of building bulk and scale. The opportunity for a family to remain in a home and to increase amenity and accommodation where it has been shown to have a minimal environmental impact and produces an excellent design outcome is a good planning outcome.

A superior planning outcome is achieved by allowing some flexibility to maximum building on this steeply sloping site.

Lack of impact

As noted in the above discussion and in the Statement of Environmental Effects, despite the modest numerical building and 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 building height.

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

The planning objectives of the subject development standards seek to achieve predominantly two storey dwellings with a pitched roof form. The proposal achieves the objectives of this development standard in the context of a steeply sloping site, where a better planning outcome has already been achieved by concentrating development on the more gently sloping portion of the site. However, where the building overlaps a fall in the topography, there are parts of the building where the roof exceeds the control. This is shown in Figures 1 and 2 above. The new modified roof exceeds the height control in the same area of the site due to the drop in the topography below. The proposed dwelling is two storey in form, with the increased habitable area located within an attic form. As shown in the sections provided, there is sufficient head height within the attic which complies with the height limit of 8.5 metres however the design integrity of the building relies on the new modified roof form matching that of the existing dwelling.

Strict application of the maximum building height standard would result in changes to the design that result in a less satisfactory planning outcome from a visual point of view. A positive planning outcome is achieved in this instance by not strictly complying with the building and wall height standard, as demonstrated in this clause 4.6 submission and in the Statement of Environmental Effects.

Supporting a building design that suitably responds to site constraints and context, without adversely impact on the environment, character or amenity of the locality is appropriate and by also providing for a better planning outcome, justifies contravening the subject development standard in this instance.

Council must also be satisfied that the proposal meets the objectives of the standards and the objectives of the subject zone. The proposal meets the objectives of the maximum building height standard, as discussed above and as detailed in the SEE and also meets the objectives of the E4 Environmental Living 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 height variations are generally minor and are 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.

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

The proposed new modified roof form on the existing dwelling will result in a dwelling which is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land (cl 1.3(c)).

Similarly, the proposed alterations and additions to the existing dwelling will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Palm Beach Road, which also promotes the orderly and economic use of the land (cl 1.3(c)).

The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties (cl 1.3(g)).

7. Conclusion

This development proposes a departure from the maximum building height control, with the proposed new addition having a maximum building height of 10.27 metres. The existing building already exceeds this control in the same area of the site due to the shape of the roof.

This variation occurs as a result of the sloping topography of the site and the established building platform already on the site.

This objection to the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that that the objectives of the standard will be met and that strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

The bulk and scale of the proposed development is appropriate for the site and locality. The proposed building form and height is consistent with the established 2 to 3 storey building scale in the locality and is compatible with the existing and desired future character and streetscape, as envisaged in the planning controls for the Palm Beach locality and the E4 Environmental Living Zone.

The development, in the form proposed, responds to site topography and the siting of neighbouring dwellings and provides for an appropriate building typology, density, scale and height, with no material environmental, streetscape or amenity impacts. The proposal is consistent with the objects of the EP&A Act. Requiring 100% compliance is unreasonable and unnecessary in this case, as it would not result in any material benefit and in relation to urban design or amenity. As demonstrated in this submission, requiring strict numerical compliance would create a less desirable planning outcome.

Some flexibility with respect to the application of the building and height control is appropriate on sloping sites and where development context, such as the form and location of the established built form suggests a more considered application of development standards. The additional building height, above the nominated standards is modest in extent. The only material height encroachment relates to the apex of the roof form which arises from a drop in the level of the land at this location. The proposed modified roof form is entirely located over the existing building footprint and seeks to mimic the same shape and form of the existing vaulted roof in order to provide a satisfactory urban design outcome.

The additional building height has no material effect on perceived building bulk and scale, the desired future character of the area, the streetscape, or the residential amenity of neighbouring properties.

The proposal achieves the objectives of the E4 Environmental Living Zone and the building standard, despite the numerical non-compliance. The requested modest variation to the 8.5m maximum building height standard is appropriate and worthy of support.

Leonie Derwent
Ingham Planning Pty Ltd
February 2020, revised May 2020.