

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 25 NOVEMBER 2020



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 25 November 2020

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 11 NOVEMBER 2020

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 11 November 2020 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2020/0778 - SANDY BAY ROAD (CLONTARF MARINA), CLONTARF - CHANGE OF USE FROM KIOSK TO CAFE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2020/717061
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0778 for change of use from kiosk to cafe on land at Lot 1 DP 1240961, Sandy Bay Road (Clontarf Marina), Clontarf, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0778
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 1240961, Sandy Bay Road CLONTARF NSW 2093
Proposed Development:	Change of use from kiosk to cafe
Zoning:	Manly LEP2013 - Land zoned RE1 Public Recreation
Development Permissible:	
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Roads & Maritime Services Clontarf Marina Pty Ltd
Applicant:	Hamptons Property Services Pty Ltd
Application Lodged:	14/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	29/07/2020 to 12/08/2020
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 5,000.00

EXECUTIVE SUMMARY

The development application seeks consent to change the use of the existing kiosk at Clontarf Marina to a café pursuant to *State Regional Environmental Plan (Sydney Harbour Catchment) 2005* ('The SREP').

Clontarf Marina is located outside the land application map for the Manly Local Environment Plan 2013. The subject property is located within the Sydney Harbour Catchment therefore the provisions the SREP apply. The site is zoned No W5—Water Recreation under the SREP, and the MLEP and MDCP do not apply.

The public exhibition period generated a total of three (3) individual submissions. The submissions

raised a number of concerns including permissibility of use, waste and suitability of the site. All concerns have been addressed within the report, and overall, there were no matters raised that would warrant the refusal of the application.

The application has been referred to DDP under the discretion of the Executive Manager of Development Assessment.

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

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent to change the use of the existing kiosk to a café pursuant to the SREP.

The operational details are as follows:

- Maximum 20 patrons.
- Maximum four (4) staff members at any one time.
- Hours of operation:
 - Monday - Friday: 7:30am - 3:30pm
 - Saturday and Sunday: 7:30am to 4:00pm
- New screen/barrier to the southern side of the existing deck.

Note: Existing hours of operations are 7:00am to 10:00pm.

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 1 DP 1240961 , Sandy Bay Road CLONTARF NSW 2093
Detailed Site Description:	<p>The site is located within Sandy Bay area and currently contains an existing commercial marina.</p> <p>The subject site is located on Sandy Bay Road, Clontarf. The marina occupies a total area of 7,795m2.</p> <p>The site is zoned W5 - Water Recreation SREP (Sydney Harbour Catchment) 2005</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>To the west of the subject site is Middle Harbour, The Spit and several other marinas largely consisting of fixed berths with some swing moorings. Between Sandy Bay and The Spit is a navigation channel.</p> <p>The locality largely consists of dwelling houses and public reserves to the land based side, and Marinas and sailing/skiff clubs along the western side of the harbour.</p>

Map:



SITE HISTORY

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

DA2012/0183

Clontarf Marina (DA2012/0183) was approved by the Joint Regional Planning Panel (JRPP) on 24 June 2014, for the following:

Removal of forty one (41) swing moorings, eighteen (18) swing moorings retained, demolition of existing twenty-five (25) vessel berth marina including four (4) fuel berths, construction of a new marina containing sixty-four (64) vessel berths, entry way, platform, above ground fuel tanks, relocation of existing swing moorings and alterations and additions to the existing boatshed.

The following condition of consent was included as part of the final approval:

"ANS04

The kiosk is to operate in accordance with the definition contained within the standard instrument (Local Environmental Plans) Order 2006. The use of the kiosk and {sic.} shall not extend to that of a café and shall not operate between the hours of 10.00pm and 7.00am.

Reason: to ensure that the kiosk does not operate as a water based restaurant which is a prohibited development."

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 commercial purposes for an extended period of time. The proposed development retains the commercial use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 applies.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was</p>

Section 4.15 Matters for Consideration'	Comments
	<p>requested in relation to the use of the proposed cafe.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 from 29/07/2020 to 12/08/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Mr Ian David Smith	21 Peronne Avenue CLONTARF NSW 2093
Mr David Anthony Fleming	7 Peronne Avenue CLONTARF NSW 2093
Mr David Warren Patterson Ms Susan Gai Cheney	13 Peronne Avenue CLONTARF NSW 2093

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

- **Waste Management.**
- **Permissibility of Use (café).**
- **Suitability of café.**
- **Investigate the current situation in relation to boats and offices that are parked around the marina.**

The matters raised within the submissions are addressed as follows:

- **Waste Management**
Comment:
The application was referred off to Council's Environmental Health Officer for comment due to being a food and drink premise. The referral has considered the relevant impact of the proposed use including noise, deliveries and garbage/grease trap collection. With particular regards to waste collection, a suitable condition has been recommended to ensure delivery of goods to the café and services including garbage and recyclable collection, and grease trap pump-outs do not occur between 10:00pm and 7:00am Monday to Saturday and 10:00pm and 7:00am Sundays & Public Holidays.
- **Permissibility of Use (café)**
Comment:
Concern is raised in regard to the permissibility of use of the proposed café, given a kiosk was previously conditioned within the original consent (DA2012/0183). This issue is discussed in detail within this report (See comments under *Sydney Harbour Environmental Plan (Sydney Harbour Catchment)* 2005. In summary, the proposed use of the café is permissible being ancillary to primary use of the Commercial Marina.
- **Suitability of café**
Comment:
Concern is raised by a neighbouring property in regards to the suitability of the proposed café, noting that the café and commercial marina adjoins a residential area and national park. The

suitability of the café is discussed in detail within this report having regard to amenity of adjoining properties and general operation of the café. In summary, subject to conditions of consent the proposed café is considered a suitable use and will not have any unreasonable impact upon neighbouring properties.

- **Investigate the current situation in relation to boats and offices that are parked around the marina.**

Comment:

A neighbouring property has requested that Council investigate "existing boats and offices that are parked around the marina to confirm that the height and weight of the boats and shed" approved under the original application (DA2012/0183). This is not a issues that can be dealt with under this the assessment of a development application nor does it relate to this proposal. This does not warrant the refusal of this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>Comments:</p> <p>The applicant is seeking to regularise the use of a cafe. The development was previously approved as a kiosk which then operated as a cafe without development consent. Subsequently an Order was issued by Council.</p> <p>The impact of the cafe on surrounding amenity prior to this application included noise from deliveries and garbage/grease trap collection and breaches of the Food Standards Code.</p> <p>Council will condition a review of the food premises fit-out and hours of operation for the cafe and services to the cafe.</p> <p>Recommendation:</p> <p>Approval - Subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). The acoustic report and proposed operating hours have been considered in determining whether the change of use is likely to impact upon biodiversity values on the site or surrounding areas. Given the band of operating hours are proposed to be limited to between 7:30am and 4:00pm, it is considered that noise associated with the cafe is unlikely to impact further upon native wildlife. Furthermore, the proposal will not require further clearing outside of the existing footprint and therefore will not impact upon native vegetation.</p>
NECC (Coast and	<p>The application has been assessed in consideration of the <i>Coastal</i></p>

Internal Referral Body	Comments
Catchments)	<p><i>Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area map but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Hamptons Property Services Pty. Ltd. dated 3 July 2020, the DA satisfies requirements under Clause 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</p> <p>Harbour Foreshores & Waterways Area</p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA.</p>

Internal Referral Body	Comments							
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Hamptons Property Services Pty. Ltd. dated 3 July 2020, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p>The subject site is located within/adjacent to the W5 (Water Recreation) Zones.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Hamptons Property Services Pty. Ltd. dated 3 July 2020, it is determined that the objectives and assessment criteria of the zone have been met.</p> <p><u>Wetland Protection Zone</u></p> <p>The subject site is located within the Wetland Protection Zone. Hence, Part 6, Clauses 61, 62 and 63 of the SREP (Sydney Harbour Catchment) 2005 apply for assessment of this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Hamptons Property Services Pty. Ltd. dated 3 July 2020, it is determined that the objectives, requirements of development consent and matters for consideration have been assessed and met.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>No other issues identified.</p>							
NECC (Riparian Lands and Creeks)	No objections							
Strategic and Place Planning (Heritage Officer)	<table><tr><th>HERITAGE COMMENTS</th></tr><tr><td><u>Discussion of reason for referral</u></td></tr><tr><td>The proposal has been referred to Heritage as the subject property contains a heritage item</td></tr><tr><td>I1 - Harbour Foreshores - adjoins mean high water mark along Sydney Harbour</td></tr><tr><th>Details of heritage items affected</th></tr><tr><td><u>Statement of significance:</u> Natural landscape type - Aesthetic.</td></tr><tr><td><u>Physical description:</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.</td></tr></table>	HERITAGE COMMENTS	<u>Discussion of reason for referral</u>	The proposal has been referred to Heritage as the subject property contains a heritage item	I1 - Harbour Foreshores - adjoins mean high water mark along Sydney Harbour	Details of heritage items affected	<u>Statement of significance:</u> Natural landscape type - Aesthetic.	<u>Physical description:</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.
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Internal Referral Body	Comments		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	The site is not listed under this SREP.
	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	N/A	
	Consideration of Application		
	The proposal seeks consent to use the existing kiosk as a cafe, and install some additional umbrellas and weather protection screens on the deck. The heritage item runs along the mean high water mark and passes under the marina along its eastern end. Heritage notes the marina and its decking is already in place and thus Heritage considers there to be no impact to the heritage item from the proposal.		
	Therefore Heritage raises no objections and requires no conditions.		
	Consider against the provisions of CL5.10 of MLEP.		
	Is a Conservation Management Plan (CMP) Required? No		
	Has a CMP been provided? No		
	Is a Heritage Impact Statement required? No		
	Has a Heritage Impact Statement been provided? No		
Further Comments			
COMPLETED BY: Brendan Gavin, Principal Planner			
DATE: 10 August 2020			

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 commercial 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 commercial land use.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Clontarf Marina is located outside the land application map for the Manly Local Environment Plan 2013. The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

The subject site is located in Zone W5 Water Recreation under the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

The objectives of this zone are as follows:

- (a) to protect the natural and cultural values of waters in this zone,*
- (b) to prevent damage or the possibility of longer term detrimental impacts to the natural and cultural values of waters in this zone and adjoining foreshores,*
- (c) to give preference to enhancing and rehabilitating the natural and cultural values of waters in this zone and adjoining foreshores,*
- (d) to provide for the long-term management of the natural and cultural values of waters in this zone and adjoining foreshores.*

Comment:

The application seeks consent to change the use of an existing kiosk to a cafe (food and drink premises). The physical works associated with the application are limited to a barrier/screen. Subject to compliance with conditions recommended within this consent, such as those aiming protect the surrounding sensitive marine environment, the proposal will ensure consistency with these above objectives.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality) and Clause 26 (relating to maintenance, protection and enhancement of views) has been undertaken. The proposal is considered to be consistent with these provisions of the SREP.

Given the scale of the proposed development referral to the Foreshores and Waterways Planning and Development Advisory Committee was considered necessary, pursuant to Schedule 2 of the SREP. In referring the proposal to the Committee, Northern Beaches Council, as the consent authority, has satisfied its statutory obligation as required under the SREP. No response has been received within the 30 day period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Land Use Permissibly under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposed development is land/water interface development under the SREP and in accordance with clause 5(1) Northern Beaches Council is the consent authority.

The proposed development is not listed as a permissible use within clause 18 and as a result an assessment pursuant to clause 18(2) is necessary to consider the permissibility of the development.

Clause 18(2) states the following:

"(2) Despite subclause (1), development not referred to in the Table to this clause may be carried out with development consent, but only if the consent authority is satisfied that the development:

- (a) is not inconsistent with the aims of this plan or the objectives of the zone in which it is proposed to be carried out, and*
- (b) is not inconsistent with any other environmental planning instrument that applies to the land, and*
- (c) will not otherwise have any adverse impacts."*

Comment:

With regard to the above, an assessment of the proposed change of use from kiosk to a café is considered acceptable given it maintains consistency with the zone objectives detailed within clause 17. As such the development is permissible with development consent.

Note: A condition of consent has been recommended to ensure that, should the application be approved, the business operation is consistent with the definition of a 'food and drink premises'.

A food and drink premises is defined as a:

"premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,*
- (b) take away food and drink premises,*
- (c) a pub,*
- (d) a small bar.*

Note. Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary."

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

SITE HISTORY

Clontarf Marina (DA2012/0183) was approved by the Joint Regional Planning Panel (JRPP) on 24 June 2014. As noted previously the following condition of consent was imposed as part of this consent.

"ANS04

The kiosk is to operate in accordance with the definition contained within the standard instrument (Local Environmental Plans) Order 2006. The use of the kiosk and {sic.} shall not extend to that of a café and shall not operate between the hours of 10.00pm and 7.00am.

Reason: to ensure that the kiosk does not operate as a water based restaurant which is a prohibited development."

Pursuant to Division 1 Clause 18 of the SREP (Sydney Harbour Catchment) 2005, *water-based restaurants* are prohibited in the the W5 zone. *SREP (Sydney Harbour Catchment) 2005* defines the use as follows:

Water-based restaurant and entertainment facility means a vessel or structure that floats on, or is fixed in, the waterway, that is used as a club or restaurant or for entertainment (on a commercial basis) and that has a direct structural connection between the foreshore and the waterway.

The proposed use is not a stand alone facility and will not be utilised for entertainment purposes and as such is not consistent with the above definition.

The proposed café will be ancillary to the use of the site as a whole for the purpose of a commercial marina. The proposed café will occupy approximately one quarter of the existing marina building and is therefore subservient to the principal purpose of the site being the commercial marina. The café is not a major component of the overall development, and the dominant use of the site will remain a commercial marina. Within the W5 zone "commercial marinas" are permissible with consent. Commercial Marinas as defined under the SREP allows for permanent associated commercial facilities. A café (Food and

Drink premises) is a type of commercial use and is a permissible use within the W5 zone of the SREP.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

Comment:

This clause does not apply to land within the Foreshore and Waterways Area within the meaning of the SREP.

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

Comment:

This clause does not apply to land within the Foreshore and Waterways Area within the meaning of the SREP.

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

Development consent must not be granted to development on land within the coastal zone unless the

consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Council's Coast and Catchments Division has provided comments indicating that the proposal satisfies the requirements under Clause 15.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

OTHER ASSESSMENT MATTERS

Residential Amenity

An acoustic report has been submitted with the development application to address noise impacts of the proposed development with regards to hours of operations and patron numbers. The development does not directly adjoin any residential properties and the proposed use starts to publicly operate at 7:30am. Council's environmental health officer has reviewed the submitted acoustic report and is satisfied the development will not have an unreasonable impact with regard to noise. The hours of operations and maximum patron (20) are suitable for the use of the café and will not unduly disrupt the amenity of residential in the nearby vicinity.

Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 Sydney Harbour Foreshores & Waterways Areas

The proposed development is consistent with the relevant controls of Clauses 4.2, 4.3 and 4.7 of the Sydney Harbour Foreshores & Waterways Areas Development Control Plan for Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. As required by clause 4.2, the proposal café will retain public access to waterways.

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;
- Codes and Policies of Council.

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

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

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

This assessment has found that the proposed development is consistent with both the the commerical context and constraints of the site being that the subject site adjoins a residential zone. The resultant development will allow for safe access to and from the site, and will not result in any unreasonable impacts upon the character of the locality or the amenity of adjoining properties.

As detailed within the report, Council considers the use of the café as permissible pursuant to the SREP. Conditions of consent have been imposed to minimise the impact of the ongoing operation of the café.

Overall, the proposal has been found to be consistent with the relevant provisions of the SREP and the Manly Development Control Plan and has been recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0778 for Change of use from kiosk to cafe on land at Lot 1 DP 1240961, Sandy Bay Road, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A001	27 February 2020	Lucy Humphrey
A008	27 February 2020	Lucy Humphrey
A008	27 February 2020	Lucy Humphrey
A011	27 February 2020	Lucy Humphrey
A012	27 February 2020	Lucy Humphrey

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

Acoustic Report	6 March 2020	Renzo Tonin & Associates
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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

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

2. Approved Land Use

As detailed on the approved Ground Floor Plan (Dwg. No. 001) this consent limits the use of the site along the north-west side of the existing building, serving as a component to the existing Commercial Marina, for the purpose of a food and drink premises (café).

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

(development is defined by the Standard Instrument—Principal Local Environmental Plan (2006 EPI 155a) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

3. Prescribed Conditions

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

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

completed.

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

5. **Building Code of Australia Report**

The recommendations made in the Building Code of Australia Compliance and Assessment Report prepared by J Squared Engineering, dated 19 December 2019, Report Ref No. 1461 REV A are to be carried out in full to the building.
Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

6. **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.

7. **Unauthorised works**

Nothing in this consent shall authorise consent for any existing structure relating to the cafe on site.

This approval is for the use of the area for a cafe only.

Reason: To ensure compliance with the terms of this consent.

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

8. **Registration of Food Business**

The food business must notify the Appropriate Regulatory Authority for registration, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

9. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a qualified person that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

Reason: To ensure that the kitchen complies with the design requirements.

10. **Mechanical Ventilation certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

11. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate.

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

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

12. **Permitted delivery and service times**

Delivery of goods to the cafe and services including garbage and recyclable collection, and grease trap pump-outs are not permitted between 10:00pm and 7:00am Monday to Saturday and 10:00pm and 7:00am Sundays & Public Holidays.

Reason: To protect the amenity of neighbouring residents.

13. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 7:30am - 3:30pm
- Saturday, Sunday and Public Holidays – 7:30am - 4:00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

14. **Patronage**

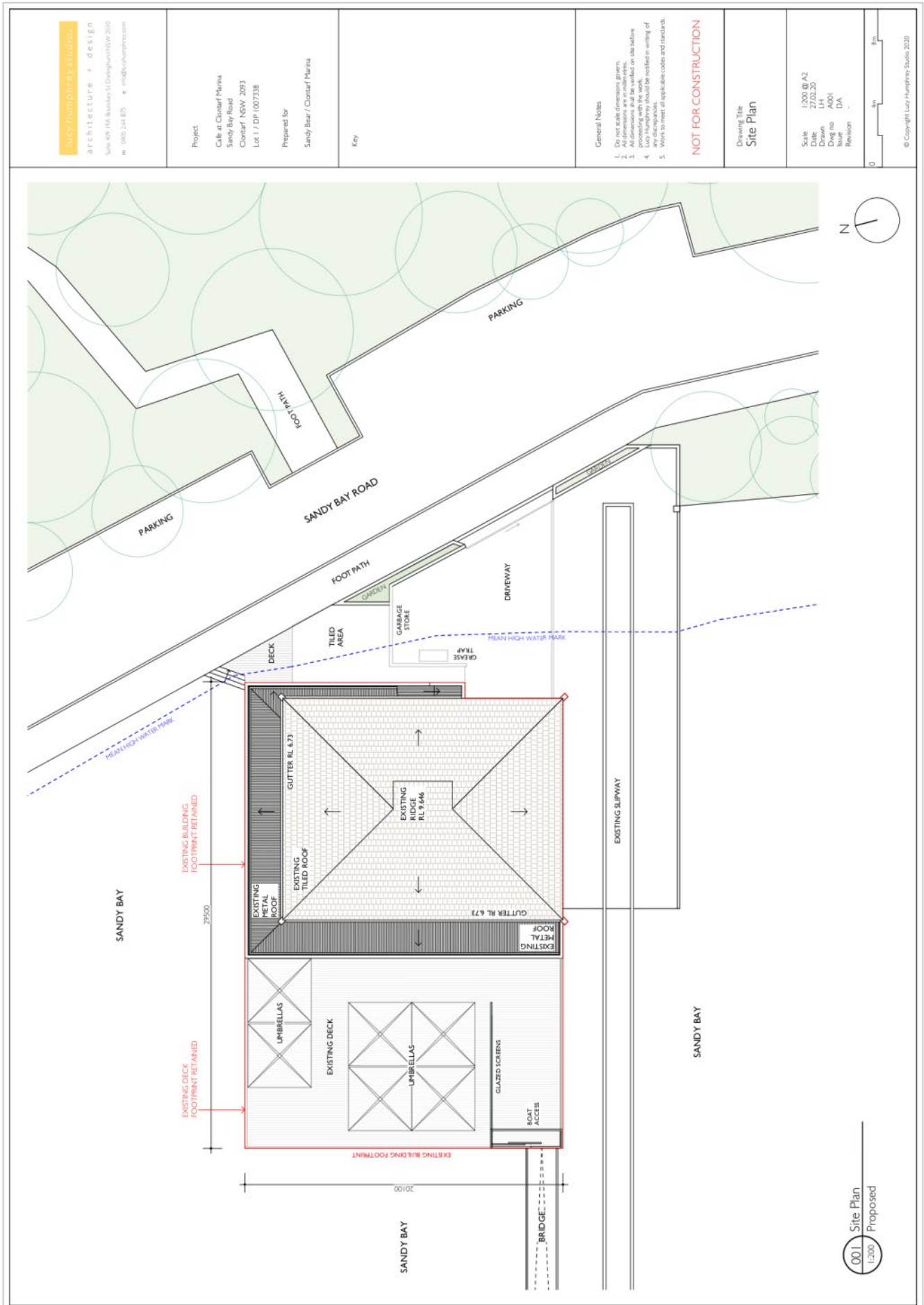
The maximum number of patrons shall not exceed twenty (20) at any time.

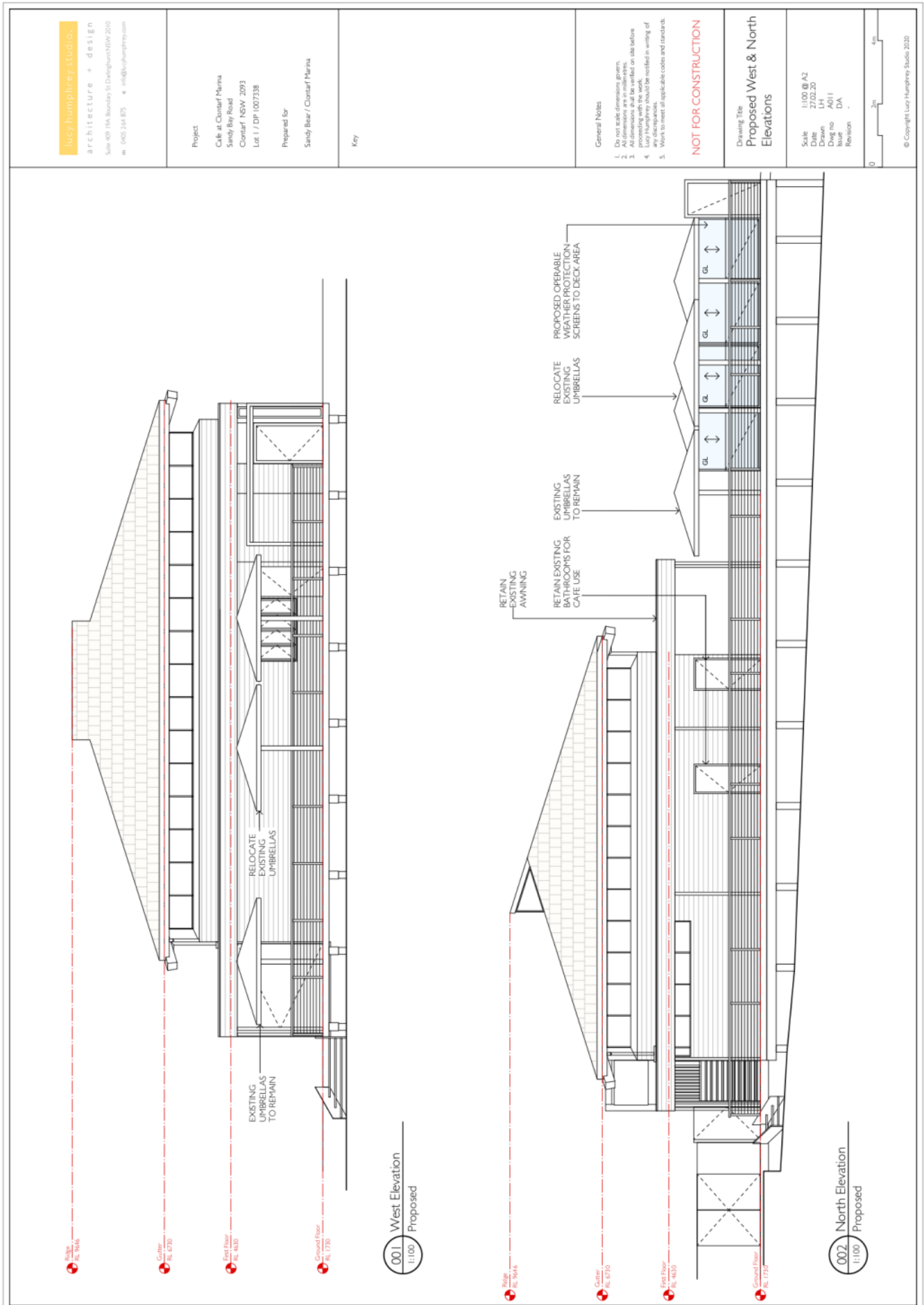
Reason: Information to ensure that amenity of the surrounding locality is maintained.

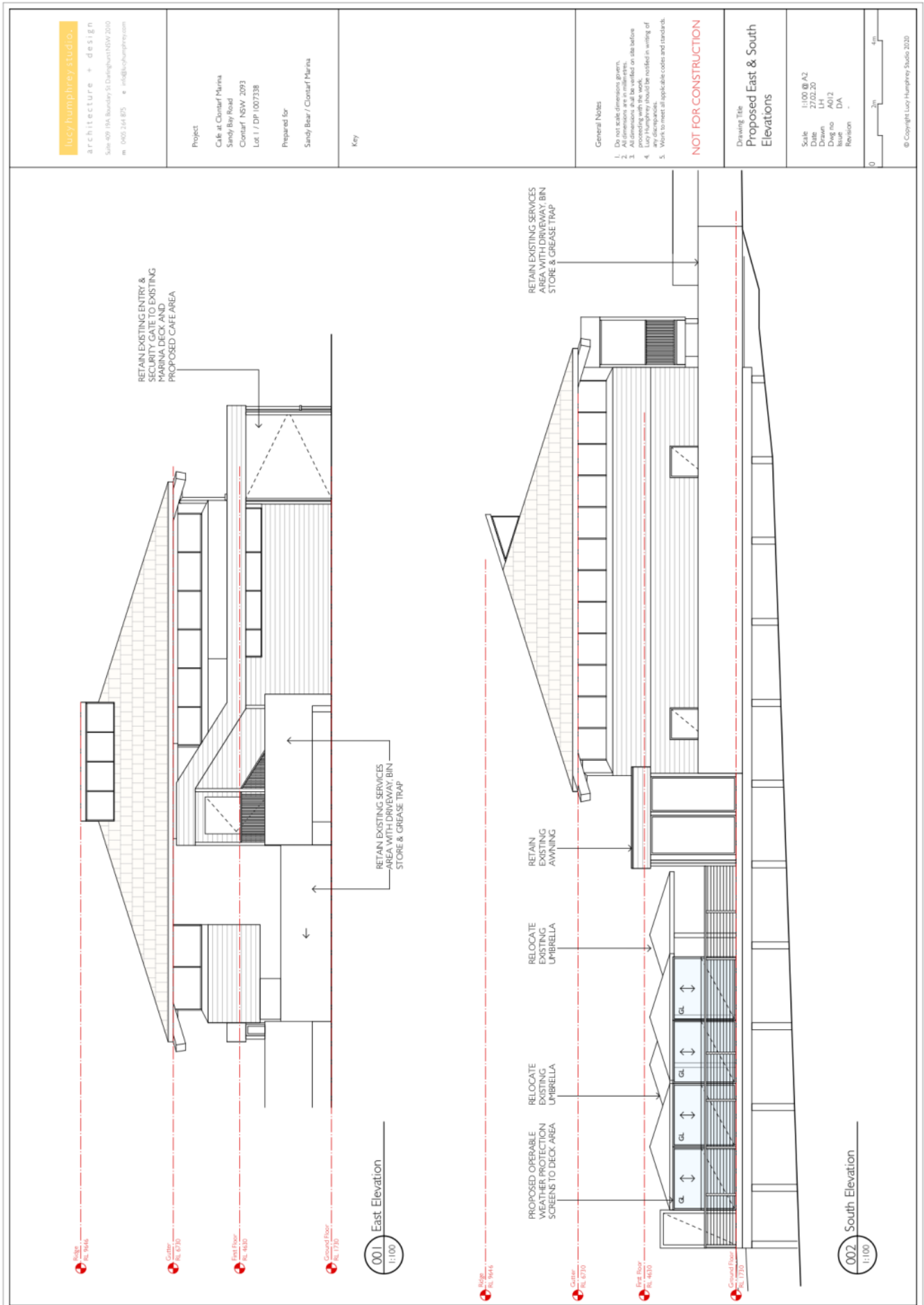
15. **Noise**

There is to be no amplified entertainment noise (music) associated with the operation of this use.

Reason: To protect surrounding residence from any noise generated by the operation of the development.







ITEM 3.2	DA2020/1169 - 10 CAPUA PLACE, AVALON BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/717074
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 DA2020/1169 for alterations and additions to a dwelling house on land at Lot 1 DP 528345, 10 Capua Place, Avalon Beach, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1169
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 DP 528345, 10 Capua Place AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Felicity Anne Benbrook
Applicant:	Jo Willmore Designs
Application Lodged:	23/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/09/2020 to 14/10/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 35.3%
Recommendation:	Approval
Estimated Cost of Works:	\$ 160,000.00

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to an existing dwelling house at No. 10 Capua Place. The works comprise of:

- Construction of a pitched roof over existing level three (3) deck,
- Replace existing single garage with a new double garage with storage,
- Affiliated landscaping works.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning



and Assessment Act 1979 and the associated Regulations. In this regard:

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater 21 Development Control Plan - D1.9 Side and rear building line

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 1 DP 528345 , 10 Capua Place AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of a single allotment located on the northern side side of Capua Place.</p> <p>The site is irregular in shape with a frontage of 39.9m along Capua Place and a depth of 29.0m. The site has a surveyed area of 822m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a three-storey 'pole home' and detached garage.</p> <p>The site is relatively steep and has an average slope of some 27 degrees.</p> <p>The site has a front and rear garden with landscaping and natural rock outcrops. The existing species are both native and exotic species, neither of which constitute threatened or endangered species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p>



2 and 3 storey residential dwellings.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions	Division 8A of the EP&A Regulation 2000 requires the consent



Section 4.15 Matters for Consideration'	Comments
of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND



The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 30/09/2020 to 14/10/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is for alterations and additions to an existing dwelling including a new garage.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 Environmental Living zone, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D1 Avalon Beach Locality, including D1.14 Landscaped Area - Environmentally Sensitive Land <p>The site is located in the E4 Environmental Living Zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features such as rock outcrops and watercourses, and the retention of existing trees.</p> <p>The existing landscape character is a landscape setting where the existing dwelling is secondary to the existing trees and planting. The proposed works minimise the impact to the existing natural landscape and satisfy the intent of the E4 Environmental Living Zone, and the proposed works remain secondary to the existing trees and planting, satisfying the DCP controls.</p> <p>No existing trees nor vegetation protected under Pittwater DCP are proposed for removal. The proposed replacement garage works do not impact upon existing landscape areas nor existing trees given the works occupy the existing footprint and existing hardstand paving area. The proposed roof over the existing deck is in close proximity to existing tree trunks, and the arboricultural assessment recommends trunk protection for existing trees identified as T1 (<i>Angophora costata</i>), T2 (<i>Elaeocarpus reticulatus</i>), and T3 (<i>Angophora costata</i>).</p> <p>The existing T3 (<i>Angophora costata</i>) sits within the existing deck that is suspended above the ground level. Ground level protection for T3 therefore is not recommended in the arborist report as the existing deck provides tree protection and proposed post excavation works are within existing hardstand footprint. Additional existing trees in close proximity to the works are exempt species (ie. <i>Cocus Palms</i>).</p>



Internal Referral Body	Comments
	Landscape Referral supports the application as the proposed works do not impact upon the existing landscape character of the site.
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the objectives and controls of PLEP cl.7.6 Biodiversity and P21 DCP B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor. The submitted arborist report has assessed the trees potentially affected, and includes various recommendations regarding tree removals and tree protection measures, and these should be included as part of any consent conditions.</p> <p>All significant planting and trees will be retained there will be no loss of canopy cover. The development is proposed in the area of least impact on native vegetation and there will be no net loss of native vegetation.</p> <p>In summary, the development complies with the relevant biodiversity controls and is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Development Engineering)	<p>The submitted Geotechnical report certifies that an acceptable risk is achievable for the development.</p> <p>No objection to approval, subject to conditions.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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



contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (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	11.5m	35.3%	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



Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	11.50m
Percentage variation to requirement:	35.3%

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*.

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

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.*

Applicants Written Request

The applicants written request argues, in part:

- *"Due to the steepness of the site, which is in excess of 30 degrees, and position of the existing deck the new deck roof will at its western end will breach the 8.5m height plane.*
- *The new roof is over existing floor area and will not increase the building footprint nor reduce landscaped areas.*
- *The roof is significantly lower than the house roof and with it being an open structure it will not increase any perceived bulk and scale and remain compatible with the scale of neighbouring homes.*
- *Overshadowing of neighbouring homes will not be increased due to the non compliant section of roof and as it is set close to the existing house and with the maximum ridge height being 1.8m lower than the neighbouring deck of the 12 Capua Place there will be no impact on existing views experienced from neighbouring properties.*

Comment:

It is agreed that compliance with Council's Building height standard is constrained by the placement of the existing dwelling and the sites topographical features. As such, the proposed alterations represent a minor change to the current non-compliance. Additionally, it is acknowledged that the proposed development does not create unreasonable bulk, as the works are not readily visible from the street, due to the elevated position of the dwelling and existing vegetation.

Whilst the proposal doesn't comply with Council's maximum building height development standard, it is agreed that this non-compliance will not create unreasonable impacts with regard to view loss, overshadowing, or bulk and scale. Overall, it is considered that demanding compliance with Council's maximum height standard is both unreasonable and unnecessary for this proposal, due to the constraints caused by the 'pole home' design of the existing dwelling and the sloping nature of the site.

It is considered that the applicants written request has adequately demonstrated that the proposed development will protect the surrounding natural environment, through retaining the site's existing topographical features and landscape elements. In addition, the written request has justified that the development is of good design and will protect the amenity of the surrounding built environment, therefore satisfying cl 1.3 (e) (g) of the EPA Act.

In this regard, the applicants written request has adequately identified that there are sufficient



environmental planning grounds to justify breaching the development standard as required by cl 4.6(3) (b).

Therefore, it is concluded 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

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

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

Comment:

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

Objectives of the Development Standard

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

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

Comment:

The proposal involves a minor addition to the existing level three deck, creating a maximum building height of 11.50m. The current roof line already sits above the 8.5m height limit (approximately 13.6m) and this can be attributed to the existing 'pole home' design of the dwelling, which sensitively responds to the topographical features of the site.

The proposed roof form will not be readily visible from the street, due to the elevated position of the subject dwelling and existing vegetation. The desired future character of the Avalon locality seeks to remain primarily a low-density residential area with dwelling houses set a maximum of two storeys, which have a well integrated landscaped setting, between the landform and landscape.

Despite the proposed roof, the existing building will remain relatively consistent within the locality, by virtue of its height and scale.

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

Comment:

The existing dwelling currently exceeds the 8.5m height control. This is primarily the result of the slope of the subject site and the existing dwelling's 'pole home' design. The proposed roof is effectively integrated with the existing dwelling and is relatively minor in nature, as it will not be



readily visible from the street or adjoining properties, due to the elevated position of the subject dwelling and existing landscaping.

Overall, it is considered that the proposed will not unreasonably affect the subject sites compatibility with the height and scale of surrounding and nearby development.

c) to minimise any overshadowing of neighbouring properties

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces. The proposal satisfies requirements of Clause C1.4 Solar Access of the Pittwater 21 DCP, as the main private open space areas of adjoining properties receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

The development satisfies this objective.

d) to allow for the reasonable sharing of views,

Comment:

District views of Avalon are obtained from the subject site in the southern direction. Therefore, the proposal will not unreasonably reduce the views experienced by the properties adjoining the sides of the subject site, in particular, Nos. 8 and 12 Capua Place. In relation, to properties to the rear of the development they are situated much higher than the subject dwelling, additionally, the ridge height of the existing dwelling is remaining the same.

In summary, the proposal will allow for the reasonable sharing of views.

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

Comment:

The subject site is relatively steep and has an average slope of some 27 degrees. The 'pole home' design of the existing dwelling has responded appropriately to the slope of the site, by adequately retaining the natural topographical features of the land. The construction of the proposed roof will not require any excavation.

Overall, the proposal seeks to upgrade the existing design by the means of enhancing the amenity experienced by the occupants. Notwithstanding, the proposed works will maintain the existing core values of the structure, therefore, it is considered that this design responds 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 proposed alterations and additions will be sufficiently set back from the building line of adjoining properties, thus preserving visual privacy for neighbours. In addition, the proposal is retaining the existing 'pole home' design of the subject dwelling and only involves minimal excavation for the garage. The proposed works does not involve the removal of any surrounding



native trees, nor will it unreasonably affect existing topographical features.

The site is not located in a heritage conservation area nor is there a heritage item on or near the site.

Objectives of the Zone

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:

The existing 'pole home' design of the dwelling, is being retained and is considered a sensitive response to the natural topography of the site. Additionally, the proposed roof over the existing deck provides greater occupant amenity, without causing unreasonable environmental impacts to neighbours or to the site itself. Amenity to adjoining properties is maintained and the proposal will allow for the reasonable sharing of views.

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

Comment:

The development will not have an adverse effect on any special ecological, scientific or aesthetic values.

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

Comment:

The proposed development does not dominate the natural environment and will not significantly alter the existing built form, therefore, will remain compatible within the established streetscape along Capua Place. The proposal does not involve the removal of any native species, nor will it unreasonably disrupt existing topographical features. Overall, it is considered that the proposal successfully achieves a residential development of a low density and scale integrated with the landform and landscape.

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

Comment:

The development will not effect wildlife corridors nor will it have an effect on riparian and foreshore vegetation.

Conclusion on Zone Objectives

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, the concurrence of the Secretary for the variation to the Height of buildings and Floor space ratio Development Standards is assumed by the Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	7.5m	N/A	Yes
Rear building line	6.5m	0.6m	90.8%	No
Side building line	2.5m - West	4.7m	N/A	Yes
	1.0m - East	1.3m	N/A	Yes
Building envelope	3.5m	Within envelope	N/A	Yes
	3.5m	Within envelope	N/A	Yes
Landscaped area	60%	56.8% (467sqm)	5.3%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	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
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

D1.9 Side and rear building line

Description of non-compliance

The proposed garage is set back 0.6 from the northern boundary (rear). The control requires a minimum setback of 6.5m.

Merit consideration

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

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

Comment:

The proposed development is consistent with the desired future character of the Avalon Locality.

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

Comment:



The proposed garage has been appropriately sited with compliant side setbacks and adequately set back from the front boundary. In addition, the works are encapsulated within P21DCP's building envelope control, while sitting below the maximum building development standard. Furthermore, the proposal provides sufficient opportunities for landscaping to soften the built form. Overall, the bulk and scale of the proposed built form has been minimised with good design and sufficient landscaping.

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

Comment:

The proposal will not result in the loss of views.

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

Comment:

The proposed works are appropriately sited in relation to the existing dwelling and will not result in the loss of any views. In addition, the proposal will retain sufficient landscaped areas to effectively screen the development.

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

Comment:

The proposal is replacing an existing garage and will maintain the existing rear setback of 0.6m. The proposed garage has been designed so that it will not create any unreasonable privacy impacts to adjoining properties. Additionally, due to the location of the garage it will not overshadow the private open space of adjacent properties. Overall, adequate building separation has been maintained as a result of the application, which will further ensure reasonable privacy, amenity and solar access is maintained for surrounding properties

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

Comment:

The proposal provides a relatively compliant landscape setting (as discussed in clause D1.14) that will enhance the natural features. In addition, the proposed works will not be readily visible from the street, due to the topography of the land and the existing vegetation within the front setback.

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

Comment:

No unreasonable amenity impacts are likely to arise as a result of the proposed works and there are no proposed changes to the current access arrangement for the site.

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



Comment:

No significant vegetation is required to be removed to facilitate the proposed works. As such, the built form will be sufficiently screened and softened as a result.

- *A landscaped buffer between commercial and residential zones is achieved.*

Comment:

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

Detailed description of non-compliance:

The control requires a minimum of 60% (493.2sqm) of the site area to be landscaped.

The application proposes a total landscaped area of 56.8% (467sqm), representing a variation of 5.3%

Provided the outcomes of this control are achieved, impervious areas less than 1 metre in width and impervious landscape treatments providing these areas are for outdoor recreational purposes only up to 6% of site area can be included in the landscaped area calculation. The inclusion of this variation to the landscaped area increases the calculation to 516.32sqm, 62.8% of site area.

Merit assessment

The outcomes of the control have each been addressed as follows:

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

Comment

The desired future character of the Avalon Beach locality is maintained.

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

Comment

The proposal involves the construction of a roof over an existing level three deck and replacing an existing single garage with a double garage. Both developments will not be readily visible from the street due to the topography of the site and the retention of significant vegetation on and around the site. Notwithstanding, the proposed roof has been effectively integrated with the existing dwelling through the selective choice of materials and incorporating a similar roof design. In addition, the visual impact is further softened through the proposal's lightweight design. The proposed garage will not be visually overbearing as it is located at ground level and will be adequately sited from the boundaries.

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

Comment

The proposed roof and garage have been designed to ensure a reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings.

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

Comment

The proposed roof will be constructed over existing hard surfaces and will not involve the removal of any landscaped area. In addition, the proposed double garage will slightly extend beyond the existing's footprint, however, this will not result in the removal of any significant vegetation. Overall, the retention of significant vegetation on and around the site will visually reduce the built form.

- *Conservation of natural vegetation and biodiversity.*

Comment

No native vegetation or wildlife species will adversely be affected by the proposed works.

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

Comment

The proposed works are to be connected to existing the stormwater drainage on site.

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

Comment

Consistency with the relevant built form controls and the retention of significant vegetation on the site will ensure the character of the area is maintained. In addition, the proposal is consistent with development in the area.

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

Comment

Soft surfaces and porous materials have been utilised where possible to minimise run-off and assist with stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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 \$ 800 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 160,000.

CONCLUSION

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

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

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

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

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

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 DA2020/1169 for Alterations and additions to a dwelling house on land at Lot 1 DP 528345, 10 Capua Place, AVALON BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 - Site plan	July 2020	Jo Wilmore Designs
DA02 - Garage plan	July 2020	Jo Wilmore Designs
DA03 - Garage elevations	July 2020	Jo Wilmore Designs
DA04 - Level 3 plan	July 2020	Jo Wilmore Designs
DA05 - Elevations	July 2020	Jo Wilmore Designs
DA06 - Elevations sections	July 2020	Jo Wilmore Designs
Colour schedule	27 August 2020	Jo Wilmore Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Aborist Impact Assessment	11 August 2020	Nigel Dean
Geotechnical Report	18 August 2020	White Geotechnical Group

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By



Waste Management Plan	14 September 2020	Jo Wilmore Designs
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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 \$800.00 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 \$160,000.00.

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

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

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

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

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

5. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

6. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas. Stormwater shall be conveyed from the site to the existing internal drainage system.

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

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

7. 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 White geotechnical group dated 18th August, 2020 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.

8. Vehicle Crossings Application

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

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

Reason: To facilitate suitable vehicular access to private property.



9. **Compliance with Standards**

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

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

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

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **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.

12. **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.

13. **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.

14. **Vehicle Crossings**

The Applicant is to reconstruct the existing damaged in accordance with Northern Beaches Council Drawing No A4-3330/1 and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

15. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of tree protection measures to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree



canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment prepared by Standfast Tree Services, as listed in the following sections: 3. Tree Protection Measures; 4. Conclusions/Recommendations, and Appendix 2, Tree Protection Measures.

The Certifying Authority must ensure that:

d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: tree and vegetation protection.

16. **Condition of trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

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

17. **Condition of retained vegetation**



Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: tree protection.

18. **Stormwater Disposal**

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

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

19. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

20. **Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

21. **No Planting Environmental Weeds**

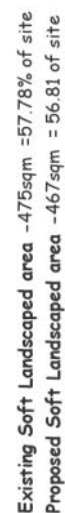
No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

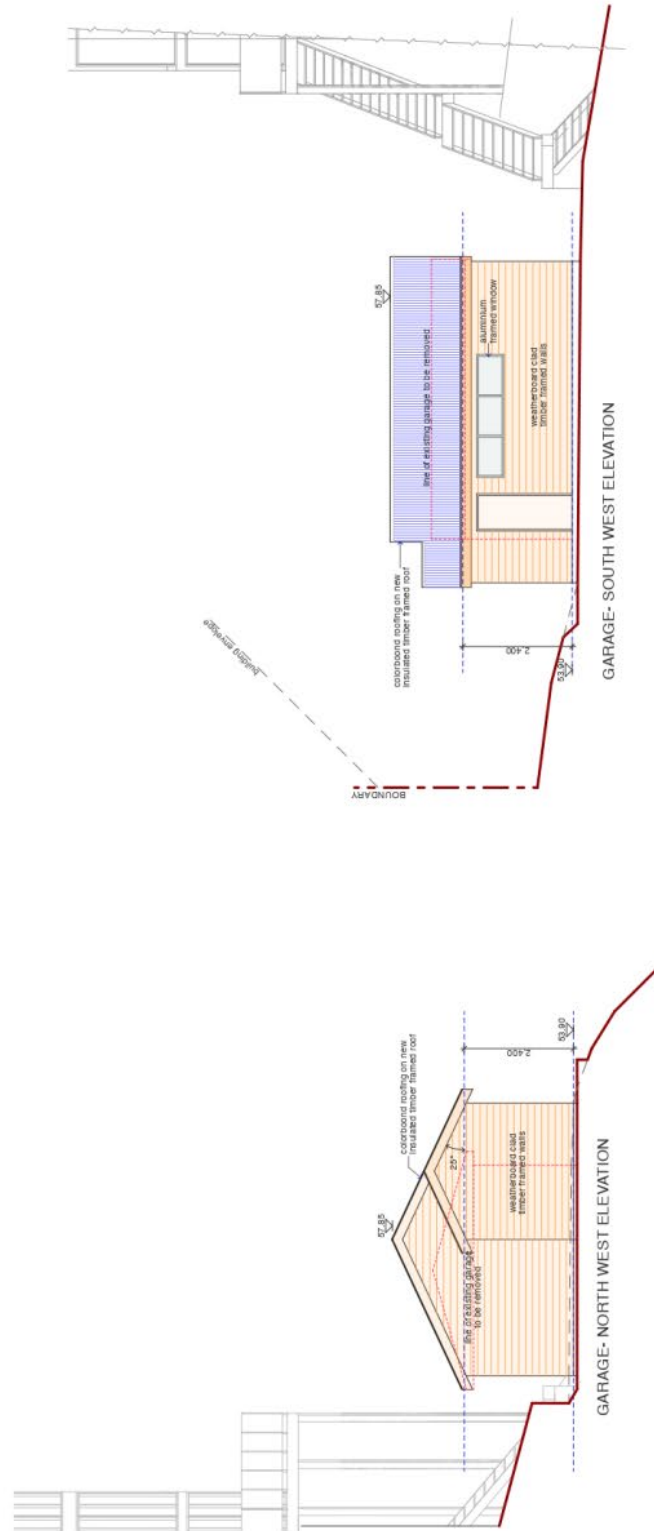
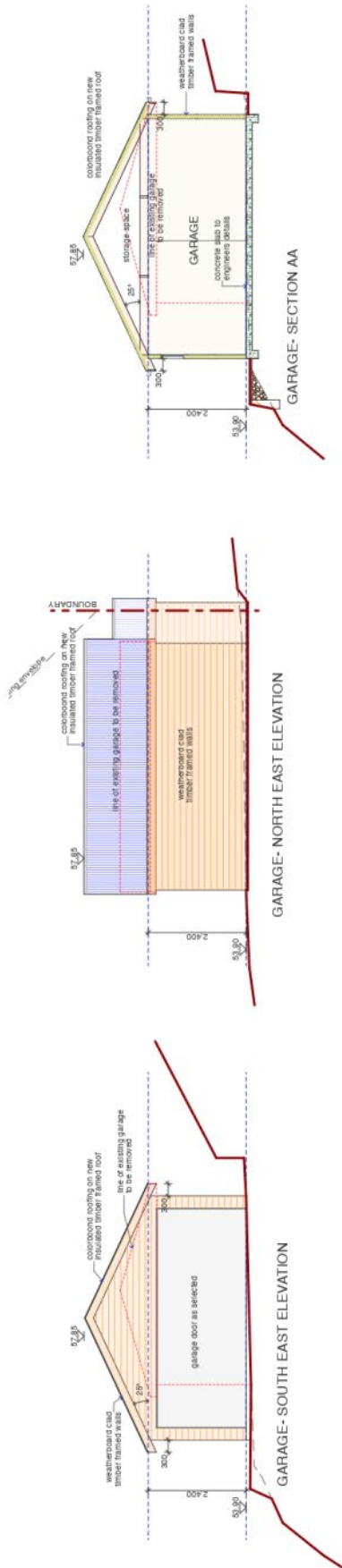
Reason: Weed management.

22. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

DA-01



AMENDMENTS	JO WILLMORE DESIGNS 11 Hudson Parade Clareville NSW 2107 (02) 9918 2479 ABN 27 370 370 173	PROPOSED ALTERATIONS & ADDITIONS for: F. Benbrook at: 10 Capua Place AVALON 2017	drawing title	date: JULY 2020 scale: 1:100 (A3) drawing number
			GARAGE ELEVATIONS <small>NOTE: Use figured dimensions only. Do not scale off drawings. All levels and dimensions to be verified prior to construction of work.</small>	DA-03



JO WILLMORE DESIGNS
11 Hudson Parade
Clareville NSW 2107
(02) 9918 2479
ABN 27 370 370 173

PROPOSED ALTERATIONS & ADDITIONS

for: F. Benbrook
at: 10 Capua Place
AVALON 2017

drawing title

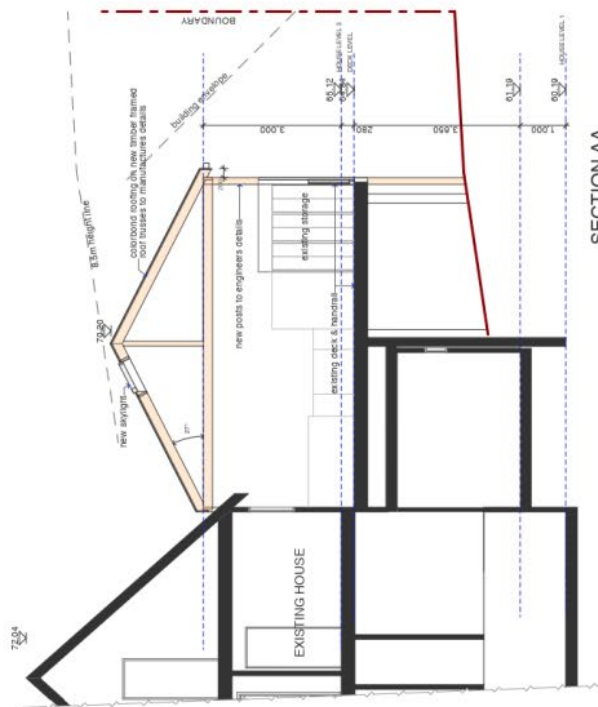
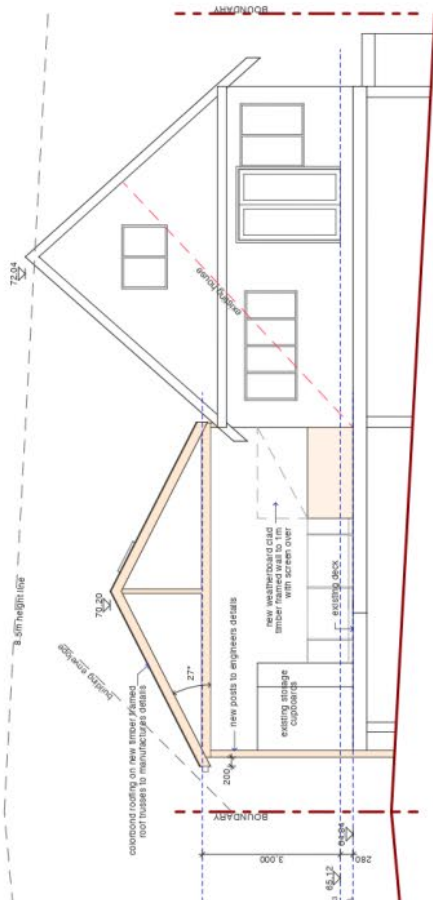
ELEVATIONS

NOTE: Use figured dimension only.
Do not scale off drawings. All levels and
dimensions to be verified prior to construction
of work

date: JULY 2020
scale: 1:100 (A3)

drawing number

DA-05



<p>AMENDMENTS</p>	<p>PROPOSED ALTERATIONS & ADDITIONS</p> <p>for: F. Benbrook at: 10 Copia Place AVALON 2017</p>	<p>JO WILLMORE DESIGNS 11 Hudson Parade Clareville NSW 2107 (02) 9518 2479 ABN 27 370 370 173</p>
<p>drawing title ELEVATIONS & SECTION</p> <p>NOTE: Use figured dimension only. Do not scale off drawings. All levels and dimensions to be verified prior to construction of work.</p>	<p>date: JULY 2020 scale: 1:100 (A3) drawing number DA-06</p>	

**REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS UNDER
CLAUSE 4.6 PITTWATER COUNCIL LEP 2014**

.....

APPLICANTS NAME : Jo Willmore Designs

PROPERTY ADDRESS : 10 Capua Place, Avalon

PROPOSED DEVELOPMENT : Alterations and additions to existing dwelling

DATE : 27th August 2020

DEVELOPMENT STANDARD : Clause 4.3 of PLEP 2014 Height Of Buildings

.....

INTRODUCTION

Consent is sought for alterations and additions to the existing house at 10 Capua Place, Avalon. The works include demolition of an existing garage, construction of new garage and a new roof over an existing deck. The new roof over the existing deck will breach the maximum 8.5m height plane and therefore we are seeking approval to vary Clause 4.3 Height of Buildings development standard of Pittwater Council Local Environmental Plan 2014.

DEVELOPMENT STANDARD - Clause 4.3 HEIGHT OF BUILDINGS

As per Clause 4.3(2) the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map - which is 8.5 metres. However Clause 4.3(2D) states that despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if:

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*
- (b) the objectives of this clause are achieved, and*
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

OBJECTIVES of Clause 4.3 Height of Buildings

- (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.*

PROPOSAL

Alterations and additions are proposed to the existing house at 10 Capua Place Avalon. The proposed works include a new garage to replace an existing single car garage and a pitched roof over an existing entertaining deck. The new roof has been designed as an open structure with a gable running east to west to reflect the existing house roof though approximately 1.8m lower. However due to the steepness of the site, which is in excess of 30 degrees, and position of the existing deck the new deck roof will at its western end breach the 8.5m height plane. At its highest point the new roof will be approximately 11.2m above natural ground though this will only occur at the ridge and for a small length of the roof. As the breach occurs in the centre of the roof which is centred on an existing deck and with the breach being approximately 6m from adjacent boundaries there will be minimal impact on neighbouring properties.

Though non compliant all the objectives of the clause will be met. The new roof is over existing floor area and will not increase the building footprint nor reduce landscaped areas. The roof is significantly lower than the house roof and with it being an open structure it will not increase any perceived bulk and scale and remain compatible with the scale of neighbouring homes. Overshadowing of neighbouring homes will not be increased due to the non compliant section of roof and as it is set close to the existing house and with the maximum ridge height being 1.8m lower than the neighbouring deck of the 12 Capua Place there will be no impact on existing views experienced from neighbouring properties. With all existing trees to remain the majority of the new roof will be screened from the streetscape maintaining a home that is low density, integrated with landscaping and therefore compatible with E4 zoning and the desired future character of the locality.

CLAUSE 4.6 of PLEP 2014 EXCEPTION TO DEVELOPMENT STANDARDS

Clause 4.6 of PLEP 2014 does provides for variation to this development standard to be approved

- (1) The objectives of this clause are as follows:*
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Also-

- (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,*

Pursuant to Clause 4.6 we are requesting the variation to clause 4.3 Height of Buildings of Pittwater LEP 2014 as we feel that the proposed works provides a better outcome than a fully compliant proposal and it is not 'expressly excluded from the operation of this clause'. The non compliance with the 8.5m height plane is attributed to the existing deck level and steepness of the site. Strict compliance could be achieved by rotating the roof and running the ridge of the new roof from north to south instead of east to west. In doing this however there would be a greater impact on neighbouring properties in terms of view loss and overshadowing. Strict compliance is unnecessary as the proposed works comply with all the objectives of this height control as set out above and will have no impact on the amenity of surrounding neighbours in terms of view loss, privacy or increased overshadowing. It is our opinion that there are 'sufficient environmental planning grounds' to justify contravening the development standard' and compliance with this standard is unreasonable and unnecessary and as such we request a variation to the standard.

SIGNED BY APPLICANT:



ITEM 3.3

**MOD2020/0461 - 3 MOORE STREET, CLONTARF -
MODIFICATION OF DEVELOPMENT CONSENT DA115/2016
GRANTED FOR ALTERATIONS AND ADDITIONS TO A
DWELLING HOUSE INCLUDING A SWIMMING POOL**

REPORTING MANAGER **Lashta Haidari**

TRIM FILE REF **2020/717135**

ATTACHMENTS

1 Assessment Report

2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2020/0461 for Modification of Development Consent DA115/2016 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot B DP 418578, 3 Moore Street, Clontarf, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0461
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot B DP 418578, 3 Moore Street CLONTARF NSW 2093
Proposed Development:	Modification of Development Consent DA115/2016 granted for alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Stephan Bjarne Dahl Jacqueline Renata Dahl
Applicant:	Jon Bianchino
Application Lodged:	28/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/10/2020 to 19/10/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 22.5%
Recommendation:	Approval

Executive Summary

The proposed development is referred to the Development Determination Panel as it is a Section 4.55 (2) Modification Application of an application previously determined by an equivalent panel being the Manly Development Assessment Unit (DAU) in 2016. Further, the application involves a departure from the Floor Space Ratio Development standard of 22.5%.

The proposed development involves amendments to the approved development to amend the location of staircase/access way, amendment to balcony, amendment to spa location, inclusion of four skylights, operable vergola and the inclusion of a storage area on the lower ground floor. The storage area generates an additional 16.1sqm of floor space and brings the development to floor space ratio of 0.49:1. The breach of the development standard is discussed in detail within this report. The additional



floor space is located beneath the concrete terrace at the rear of the building and fills in an existing undercroft area and therefore does not have an impact upon building bulk and scale, privacy, overlooking or overshadowing for adjoining properties.

The application was notified to the adjoining properties for a period of 14 days. As a result of the notification, no submissions were received.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for a Section 4.55(2) modification application to DA 10.2016.115.1 which approved alterations and additions to a dwelling house. The specific changes as part of this modification include:

Lower Ground Floor

- Relocation of stairs eastern elevation;
- New storage area adjacent to rumpus room;
- Amend bathroom location within rumpus room

Ground Floor

- New walkway eastern elevation between terrace and deck;
- Replace bifold doors with sliding doors;
- Relocate gas fire place;
- Amendment to spa location.

Upper Floor

- Reduction in depth of rear facing balcony;
- Install 4 skylights;
- Replace existing deck awning to have adjustable louvers over;
- Retain existing window to bedroom 3 rather than remove.

ASSESSMENT INTRODUCTION

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

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



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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot B DP 418578 , 3 Moore Street CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Moore Street.</p> <p>The site is regular in shape with a frontage of 15.9m along Moore Street and a depth of 31m. The site has a surveyed area of 494.3m².</p> <p>The site is located within the R2 Low Density zone and accommodates a dwelling house.</p> <p>The site has a moderate slope from front to rear, and is situated on the lower side of Moore Road. The slope of the site and existing dwelling creates a void area under the dwelling to the rear of the site. The site is burdened by an easement to maintain car parking at the rear, to the benefit of 5 Moore Street.</p> <p>The site is void of any significant vegetation, with low lying shrubs and grasses to the rear of the site and medium height vegetation along the boundary.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by single storey and two storey detached dwelling houses.</p>

Map:



SITE HISTORY

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

- Development Application 10.2016.115.1 for Alterations and additions to an existing dwelling house including demolition of an existing carport and the roof of the existing dwelling, new double garage, new flat roof, new external stairs, courtyard, above-ground swimming pool with deck, new first floor rear balcony and landscaping was approved by the Development Assessment Unit on 29/06/2016.
- Section 96(1A) Application 10.2016.115.2 to modify approved alterations and additions to an existing dwelling house involving changes to the windows and doors, modification of approved first floor balcony and internal modifications – Part 2 was approved under delegated authority on 28/09/2016.
- Section 4.55(1A) Application MOD2019/0535 to seek minor amendments to the dwelling design and enclose a section of a portion of the lower ground floor sub-floor area to create a rumpus room. Application was approved by the DDP on 5 February 2020.

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 10.2016.115.1, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under 10.2016.115.1 for the following reasons:</p> <p>The development retains the overall building footprint, land use, building height and setbacks of that already approved.</p> <p>The building retains its general appearance from that already approved and will result in no additional unreasonable amenity impacts for surrounding properties.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application 10.2016.115.1 did not require concurrence from the relevant Minister, public authority or approval body.
<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>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Environmental Plan 2013 and Manly Development Control Plan.

Section 4.55 (2) - Other Modifications	Comments
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a bushfire report and updated BASIX Certificate. This was subsequently provided by the applicant.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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/This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

An addendum letter to the original Bush Fire Report submitted for the development application was submitted with this Section 4.55 application, including certification that the development, as amended, conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The letter stated that the proposal is capable of complying with the original recommendation of BAL 12.5.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 05/10/2020 to 19/10/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

No referrals were sent in relation to this application

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. A247432_03 dated 11 November 2020).

A condition has been included in the recommendation of this report requiring compliance with the



commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.7m - Roof	Top of roof - Unchanged Proposed top of balcony 7.3m	N/A	Proposed works comply
Floor Space Ratio	FSR: 0.4:1	FSR: 0.46:1 (228.8sqm) (15% variation)	FSR: 0.49:1 (245.1sqm)	22.5%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No



Clause	Compliance with Requirements
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the Environmental Planning and Assessment Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. 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. In accordance with this, the Applicant is not required to submit a written request to vary the floor space ratio development standard. Nevertheless, an assessment of the variation is as follows:

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1
Proposed:	0.49:1
Percentage variation to requirement:	22.5%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:
 (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the



development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

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

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

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

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

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

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

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

Comment:

The Applicant's written request 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 higher floor area will not impact on adjoining neighbours and streetscape. According to Manly Council DCP Cl 4.1.3.1 – Exceptions to FSR for Undersized Lots. Council may consider exceptions to the maximum FSR if the objectives and provisions of the DCP are satisfied. Given that the majority of the planning objectives are satisfied in this proposal than it would be reasonable to approve the slightly higher FSR proposed. An exemption was submitted for Council’s assessment and was approved under a S4.55 application in 2019.

The applicant put forward the following reasons which are relied upon for this modification application and are those reasons cited in support of the previous modification:

The proposed additional area is located at the rear of the dwelling at the lower ground floor below the existing rear deck area. The additional room proposed due to it’s concealed location will have no impact on adjoining rear neighbours and does not impact on view, privacy or sunlight access to neighbours. Additionally the proposed new room does not provide additional bulk, height or scale as it is located below the existing deck and is not visible from the street; so there for not impacting on the streetscape.

The proposal produces an appropriate development outcome. The variation to the floor area is a direct result of the reduced allotment size. The DCP specifically indicates that variation to the FSR Development Standard can be sought where the allotment size is below the minimum required by the



LEP, as is the case in this instance. This noncompliance will not result in any detrimental impact to the surrounding properties or the character of the locality. Furthermore, the overall design is of good architectural quality and the development satisfies the zone objectives and the objectives of the development standard. The proposal is not visible from the street and provides for a bulk and scale that is compatible with the existing surrounding development. As there is no material impact on adjoining properties or the public domain arising from the variation to the floor area development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard.

The applicant has put forward a reasonably brief summary of the justification for the additional floor area and has cited the previously submitted modification application which increased the floor area to include a ground floor rumpus room in the same location of the site within the building undercroft. The applicant has mainly relied upon the variation clause contained within the MDCP 4.1.3.1 and previously submitted variation request which is applicable to the development. However, given that this is a modification application and the tests of Clause 4.6 do not apply, Council is able to consider this written request in the context of a modification application and considers the applicant to have provided sufficient reasons.

Later within this report is a discussion regarding the use of Clause 4.1.3.1 MDCP when considering the variation to the minimum lot size. The purpose of this clause is to recognise that there are sites within the LGA that are considered 'undersized allotments' and which Council may consider variation to the FSR control where the objectives of the development standard is achieved as to not unreasonably restrict the development of an undersized allotment.

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

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

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

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

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

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

Comment:

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



Objectives of development standard

Zone objectives

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

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

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

Comment:

The proposed additional ground floor storage area will not have a detrimental impact upon the bulk, scale or character of the building given the location below the existing concrete terrace. The ground floor rumpus room will not be visible from the street or highly visible from the property to the rear adjoining the garage.

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

Comment:

The proposed ground floor storage area will not result on a view impact for surrounding properties and in fills an existing undercroft area.

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

Comment:

The ground floor storage area will not be visually apparent from the surrounding properties, with the southern boundary being adjoined by a garage and being set within the slope of the land. No tree removal is required or impact to unique landscape features.

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

Comment:

The ground floor storage area does not present any overlooking, overshadowing or view loss impacts upon adjoining properties.

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

Comment:

Not applicable to the development.



Zone objectives

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

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

Comment: The proposed additional floor area is within an existing dwelling which will provide additional amenity and function for the residents whilst in keeping with a low density environment. The storage area is beneath an existing undercroft area and will result in the reduction of landscape area to achieve the desired character of the low density residential setting.

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

Comment: Not applicable, the site is used for residential purposes.

Conclusion:

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

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

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

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

6.9 Foreshore scenic protection area

The proposed works consist of a new rumpus room on the lower ground floor, which would not be visible from the foreshore area due to the low level of the works and the existing building to the south of the site. The amendments to the deck and spa are not considered to have an adverse impact in regards to the visual amenity of the harbour or foreshore area. Overall, the proposal is considered to meet the requirements of the clause and not cause an unacceptable impact upon the Foreshore Scenic Protection area.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 494.3m ²	Requirement	Approved	Proposed	Complies
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4.1.2.1 Wall Height	E: 6m (based on flat gradient adjacent to rumpus)	4.7m	4.7m	Yes
4.1.2.2 Number of Storeys	2	2	2	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.8m	0.8m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	0m - Garage	Unchanged	No - Unchanged
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 1.56m (based on rumpus room wall height)	2.13m	2.13m	Yes
	E: 1.56m (based on rumpus room wall height)	7.4m	3.6m	Yes
	Windows: 3m	2.13m	2.13m	No - Unchanged
4.1.4.4 Rear Setbacks	8m	6.4m	6.4m	No - Unchanged
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 60% of site area	49.5%	49.5%	No - Unchanged
	Open space above ground 25% of total open space (61sqm)	86sqm	76sqm	No - However Improved
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	52%	52%	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	226.5sqm	226.5sqm	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1m	1m	Yes
	1m curtilage/1.5m water side/rear setback	1.5m	1m - Side	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The depth of the upper floor balcony is being reduced from 2m deep to 1.3m deep and is therefore considered to have lesser impact than the balcony as approved under the previous application MOD2019/0535. No additional impacts are considered to arise from the proposal with regards to privacy and is therefore supported in this regard.

4.1.3 Floor Space Ratio (FSR)

The subject site has an area of 493.5sqm. The minimum lot size for the subject site identified on the LEP lot size map is 1150sqm. Therefore, for the purpose of the control, the lot is considered to be an 'undersized lot' and the clause may apply.

In accordance with Table 30, the clause allows a floor space ratio variation to be considered where the development involves up to a maximum of 300sqm of floor area. The proposed modifications result in a floor space of 245.1sqm and well below the maximum area for consideration under the variation clause.

Further, the proposal is considered to meet the objectives of the particular control in that:



- 1) The additional floor area will not result in an increase to the visible scale of the development, as the additional floor area is within an existing subfloor.
- 2) The additional floor area will not result in a view impact for nearby properties.
- 3) The additional floor area will not result in additional overshadowing or privacy impact for nearby properties.

Therefore, the proposal is considered to be consistent with the outcomes of the control and the variation clause may be applied in this circumstance. A detailed assessment of the variation to Clause 4.4 of the LEP is detailed earlier in this report.

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

The proposed storage area has a rear setback of 6.4m and is consistent with the rear setback as approved under the previous development application and subsequent modification application. The maintenance of this existing setback is considered reasonable and does not further encroach into the rear setback area.

4.1.5 Open Space and Landscaping

The proposed development does not comply as existing, however does not further reduce the opportunity for landscape planting or reduce the amount of open space on the site. The proposed storage area is beneath an existing concrete slab area.

4.1.9 Swimming Pools, Spas and Water Features

The DCP requires that the edge of pools and spas are setback 1.5m from the side boundary. The development as originally approved has a spa setback 1.5m from the western boundary. The proposed development seeks to amend the location of the spa to have a setback of 1m from the western boundary.

The applicant has put forward the reason for this change is to locate the spa on top of an existing rock outcrop which sits beneath the slab. This will enable construction costs to be reduced not having to suspend the spa above the ground and provide a more simple engineering solution.

Council has conducted a site inspection to view the site and surrounds and is satisfied the spa location will not result in any additional adverse impact with regards to overlooking of the adjoining property. The western boundary adjoins a driveway which services the dwelling at the rear and provides additional spatial separation to the western property. The location of the spa does not directly overlook an area of private open space or living room window. The amended location of the spa is considered reasonable and does not compromise neighbour amenity.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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

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

- The increase in floor area as a result of the proposed development;
- The changes to the development with regard to the spa location and reduction of the upper floor balcony.

The development is found to be reasonable in the context of the site and will not result in any adverse environmental impacts for surrounding properties. The additional floor area does not remove any area available for meaningful landscape planting or result in excess building bulk and scale as viewed from the surrounding properties or public domain.

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. Mod2020/0461 for Modification of Development Consent DA115/2016 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot B DP 418578,3 Moore Street, CLONTARF, subject to the conditions printed below:



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

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

a) Modification Approved Plans

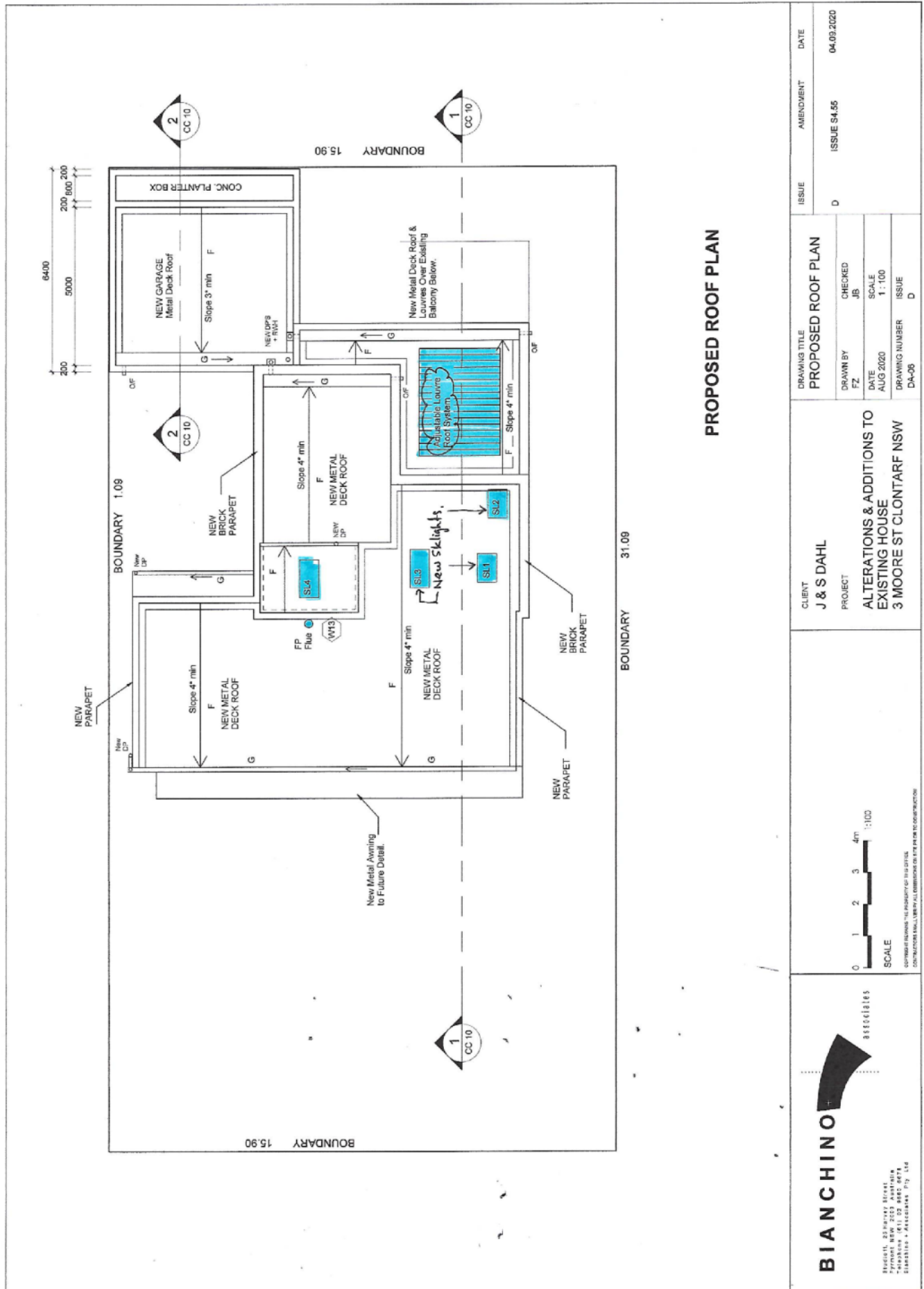
Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Ground Floor Plan - Issue D	8/09/2020	Bianchino and Associates
First Floor Plan - Issue D	11/09/2020	Bianchino and Associates
Roof Plan - Issue D	4/09/2020	Bianchino and Associates
East Elevation - Issue D	11/09/2020	Bianchino and Associates
West Elevation - Issue D	11/09/2020	Bianchino and Associates
North and South Elevation - Issue D	11/09/2020	Bianchino and Associates
Section 1-1 and Section 2-2 - Issue D	11/09/2020	Bianchino and Associates
Lower Ground Floor Plan - Issue D	8/09/2020	Bianchino and Associates

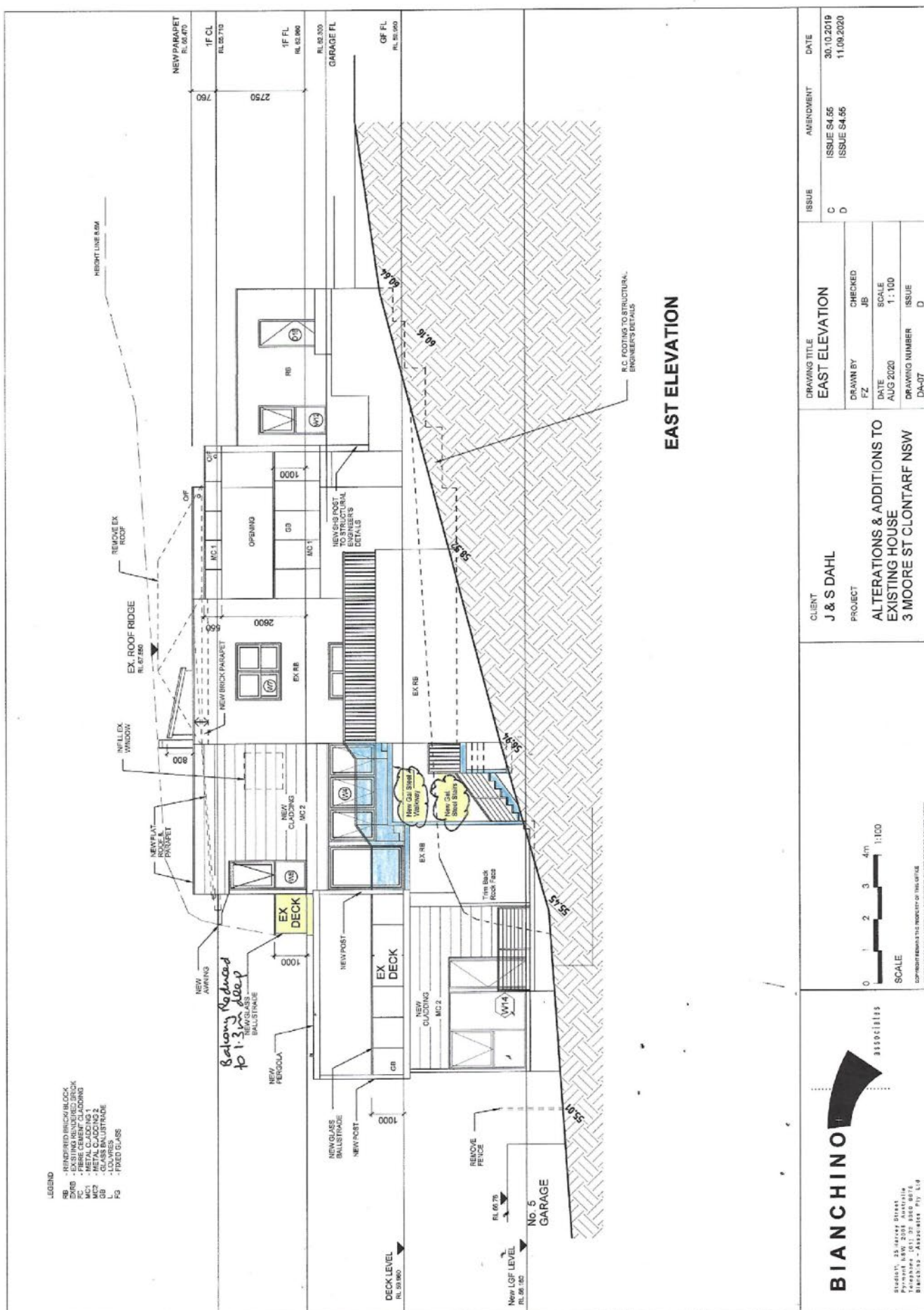
Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A247432_03	11 November 2020	Fang Zhou
Addendum Bushfire Letter	2 November 2020	Craig Burley

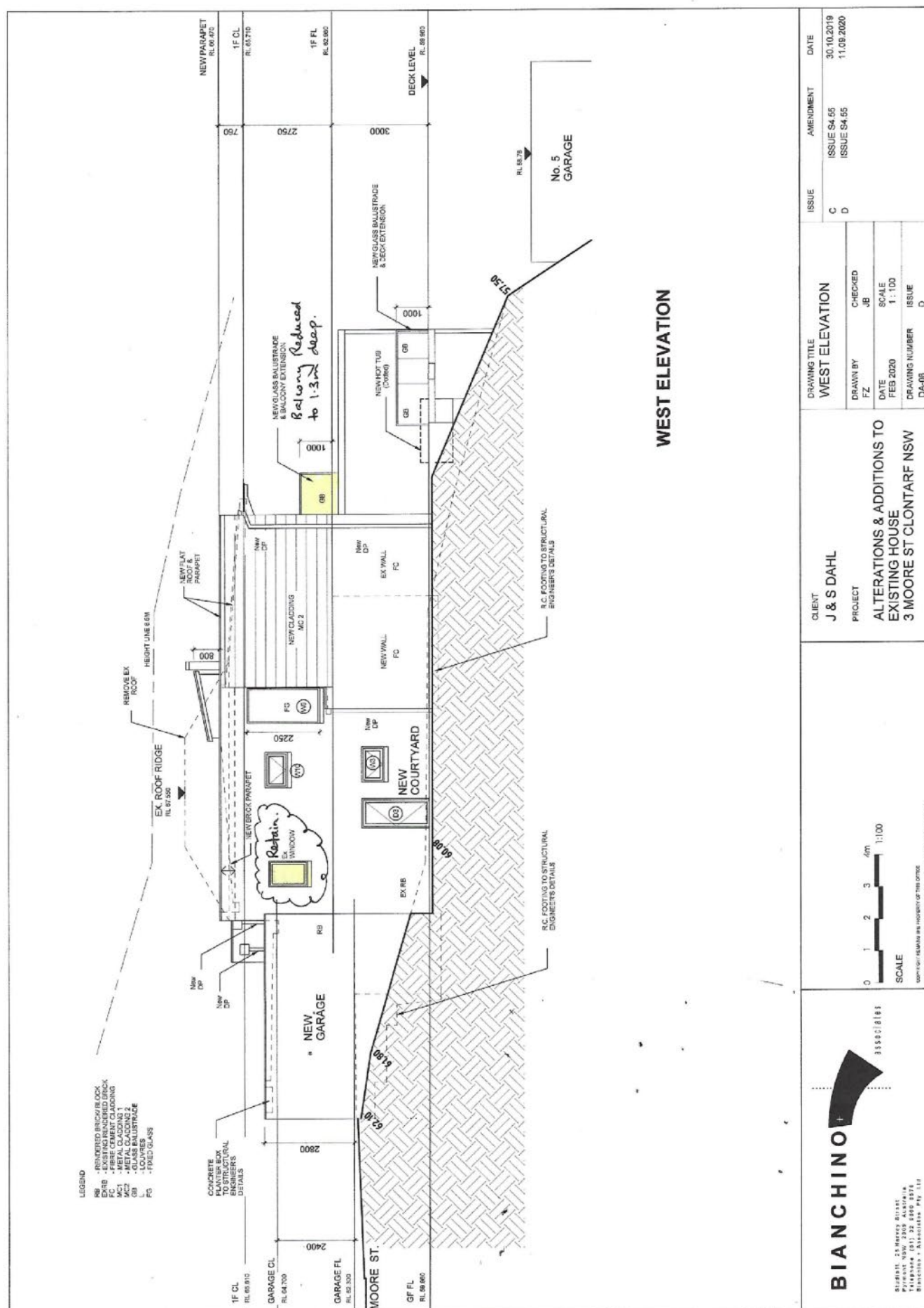
b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

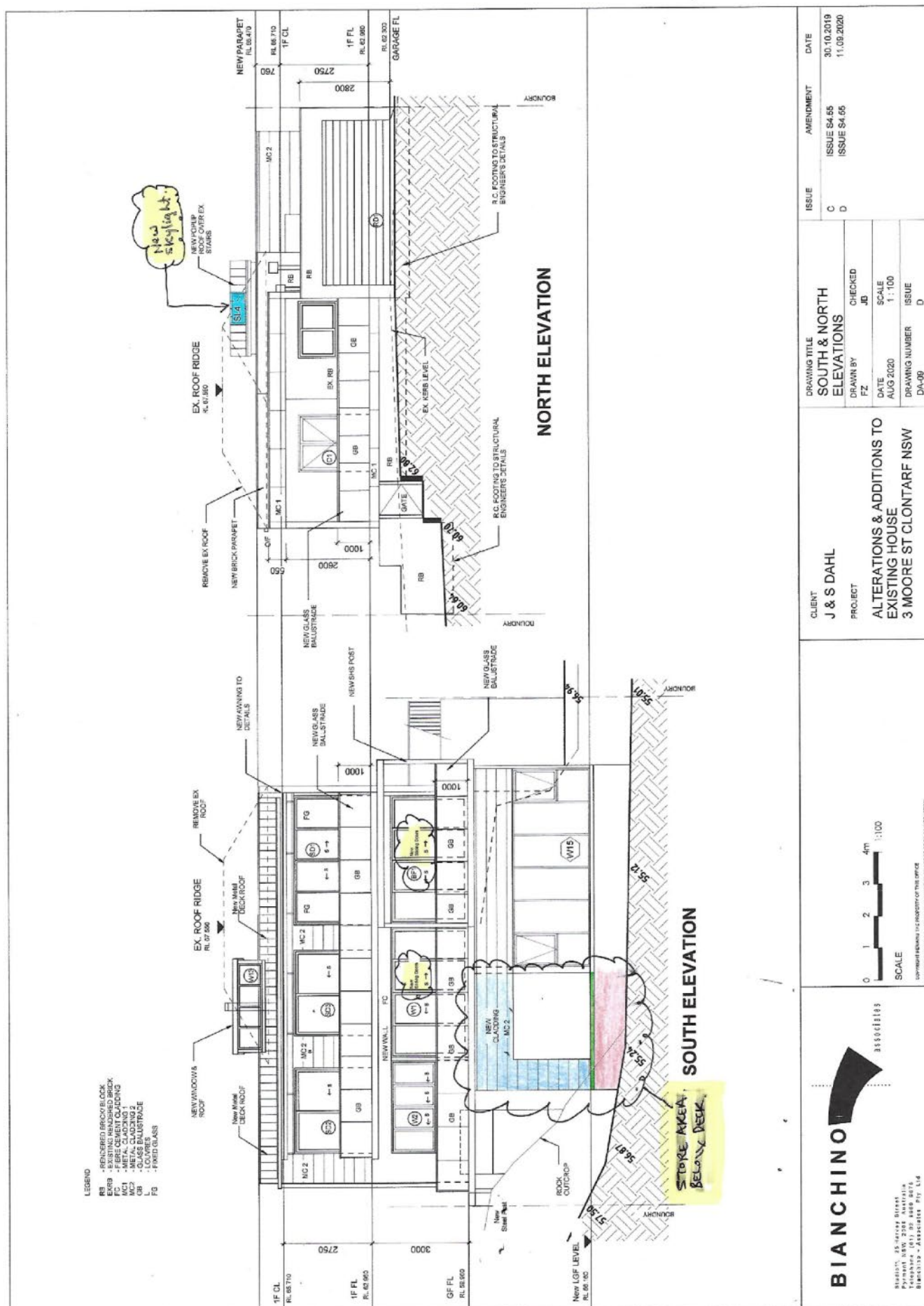
c) The development is to be undertaken generally in accordance with the following:

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









ITEM 3.4 **REV2020/0024 - 15 COUSINS ROAD, BEACON HILL, REVIEW OF DETERMINATION OF APPLICATION DA2020/0376 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**

REPORTING MANAGER Lashta Haidari
TRIM FILE REF 2020/717152
ATTACHMENTS 1 Assessment Report
 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** REV2020/0024 for Review of Determination of Application DA2020/0376 granted for alterations and additions to a dwelling house on land at Lot 5 DP 234723, 15 Cousins Road, Beacon Hill, subject to the conditions outlined in the Assessment Report.



REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2020/0024
Responsible Officer:	Ashley Warnest
Land to be developed (Address):	Lot 5 DP 234723, 15 Cousins Road BEACON HILL NSW 2100
Proposed Development:	Review of Determination of Application DA2020/0376 granted for alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	David Arthur Huxtable Alison Helen Huxtable
Applicant:	Alison Helen Huxtable
Application Lodged:	22/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	03/08/2020 to 17/08/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 52,800.00

EXECUTIVE SUMMARY

This report provides an assessment of an application for Review of Determination of a Development Application for alterations and additions to a dwelling house. On 15th May 2020 development application DA2020/0376 was approved under delegation. The approval included a condition of consent for privacy screening due to the elevation and outlook of the structure.

The proposal seeks to delete condition 9 of the original approval requiring the installation of a privacy screen along the southern elevation of the approved deck. The deletion of the privacy screen in its entirety is considered inappropriate and alternate privacy screen design has been proposed.



The Review Application does not alter the previous non-compliances including the rear setback and landscaped open space controls. These non-compliances does not result in adverse amenity impacts.

The application is referred to the Development Determination Panel for determination as it is a Review of a Determination Application.

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

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site. Accordingly, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development involves alterations and additions to the existing dwelling house. The Review Application seeks to delete condition 9 of development consent DA2020/0376. Condition 9 requires a privacy screen to be constructed along the southern elevation of the approved rear deck.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION



Property Description:	Lot 5 DP 234723 , 15 Cousins Road BEACON HILL NSW 2100
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Cousins Road.</p> <p>The site is regular in shape with a frontage of 14.2m along Cousins Road and a depth of 28.9m.</p> <p>The site has a surveyed area of 562.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing two storey dwelling house.</p> <p>The site has a variety of palms along the northern and western boundaries.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u></p> <p>Adjoining and surrounding development is characterised by similar one and two storey dwelling houses.</p>

Map:



SITE HISTORY

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

Development Application - DA2020/0376

- 21 April 2020, DA2020/0376 was lodged for alterations and additions to a dwelling house.
- 15 May 2020, DA2020/0376 was determined.



Condition 9 requiring the installation of the privacy screen was imposed as part of the consent for development application DA2020/0376. The original assessment report identifies that "the balcony has been designed and sited such that generous spatial separation is afforded between buildings. However, due to the elevation of such structure, additional privacy mechanisms have been imposed to heighten amenity for the dwelling occupants and those of adjoining and surrounding properties which include the provision of privacy screening along the southern elevation of the balcony."

Modification Application - MOD2020/0272

- 26 June 2020, MOD2020/0272 for the modification of development consent DA2020/0376 granted for alterations and additions to a dwelling house.
- 30 June 2020, MOD2020/0272 was determined.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 15/05/2020 and the notice of determination was issued on 15/05/2020. The review was lodged on 22/07/2020 and is to be considered by the Development Determination Panel on 09/12/2020, which is within 12 months of the date of determination.

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

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.



NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/08/2020 to 17/08/2020 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:
Mrs Sandra Iezza	13 Cousins Road BEACON HILL NSW 2100

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

- **Privacy will be impacted by the removal of the screen**

Comment

Concerns were raised with the potential impact on privacy from the elevated deck if the screen is to be removed. The deck without screening will not achieve a reasonable privacy outcome. The condition is to be modified to provide for louvered screens with larger spacing to ensure privacy will be maintained and additional visibility is gained to the rear yard of the subject site. A reasonable level of privacy can be achieved through the modified condition.

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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



SEPP (Infrastructure) 2007

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

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

Comment

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	6.8m	Yes

Compliance Assessment

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	4.4m	N/A	Yes
B3 Side Boundary Envelope	4m (north)	Within envelope	N/A	Yes

	4m (south)	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m (north)	2.6m-6.1m	N/A	Yes
	0.9m (south)	3.8m to stairs	N/A	Yes
B7 Front Boundary Setbacks	6.5m	7m to balcony	N/A	Yes
B9 Rear Boundary Setbacks	6m	3m-5.1m	50%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	35.3%	11.8%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B9 Rear Boundary Setbacks

The proposed rear setback remains unchanged as part of this Review Application. The variation to the rear setback has been assessed as part of the original application and considered to be consistent with the relevant objectives. The assessment of the variation as part of the original application is agreed with and supported in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

The proposed landscaped open space (LOS) remains unchanged as part of this Review Application. The variation to the LOS has been assessed as part of the original application and considered to be consistent with the relevant objectives. The assessment of the variation as part of the original application is agreed with and supported in this particular circumstance.

D8 Privacy

The privacy screening imposed as part of the original application was intended to protect the particularly open and sensitive outlook to 13 Cousins Road. To delete condition 9 of the original consent in its entirety would not achieve a reasonable privacy outcome.

It is acknowledged that there are particular family circumstances to which the residents of the subject site wish to retain direct visibility to the rear yard. A balance needs to be achieved between the need to maximise visibility to the rear yard of the subject site without compromising the need to provide privacy to the adjoining property of 13 Cousins Road. To achieve this balance condition 9 is to be modified to incorporate the following.

The privacy screen shall be of an angled louver style construction (with a maximum spacing of 100mm), to a minimum height of 1.65m above finished floor level. The privacy screen is to be positioned along the southern elevation between the rear of the balcony and the access stairs for a length of 2.5m.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019



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

CONCLUSION

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

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

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

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

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

In summary, as addressed within this assessment report, the deletion of condition 9 is considered inappropriate and alternate privacy screen design has been conditioned, and agreed on by the applicant.

The proposed development does not comply with clause B9 Rear Boundary Setbacks and clause D1 Landscaped Open Space (LOS) and Bushland Setting under WDCP. These non-compliances have been assessed and considered acceptable in this instance.

The proposal does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the PLEP 2014 and P21 DCP.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Therefore, the application is recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2020/0024 for Review of Determination of Application DA2020/0376 granted for alterations and additions to a dwelling house on



land at Lot 5 DP 234723, 15 Cousins Road, BEACON HILL, subject to the conditions printed below:

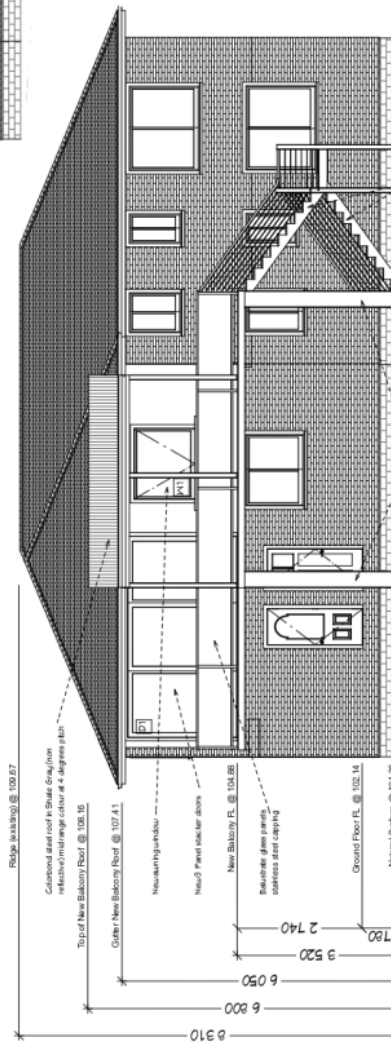
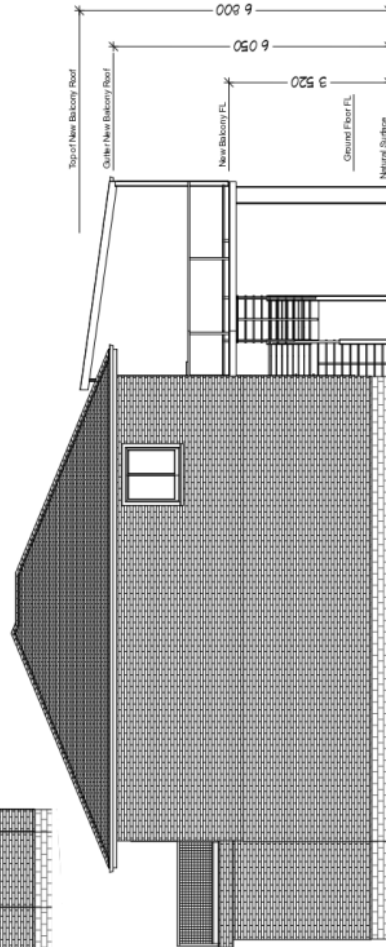
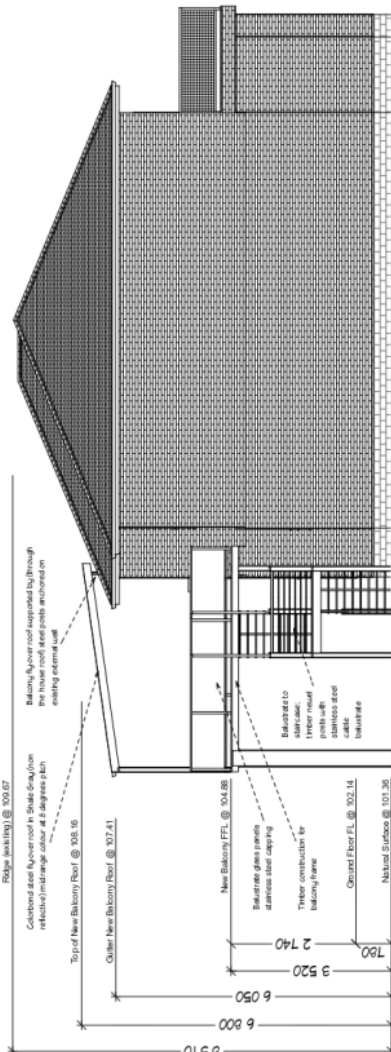
A. Modify Condition 9. Privacy Screening to read as follows:

A 1.65 metre privacy screen (measured from finished floor level) is to be erected along the southern elevation between the rear of the balcony and the access stairs for a length of 2.5m. The privacy screen shall be of an angled louver style construction (with a maximum spacing of 100mm) in materials that complement the design of the approved development.

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

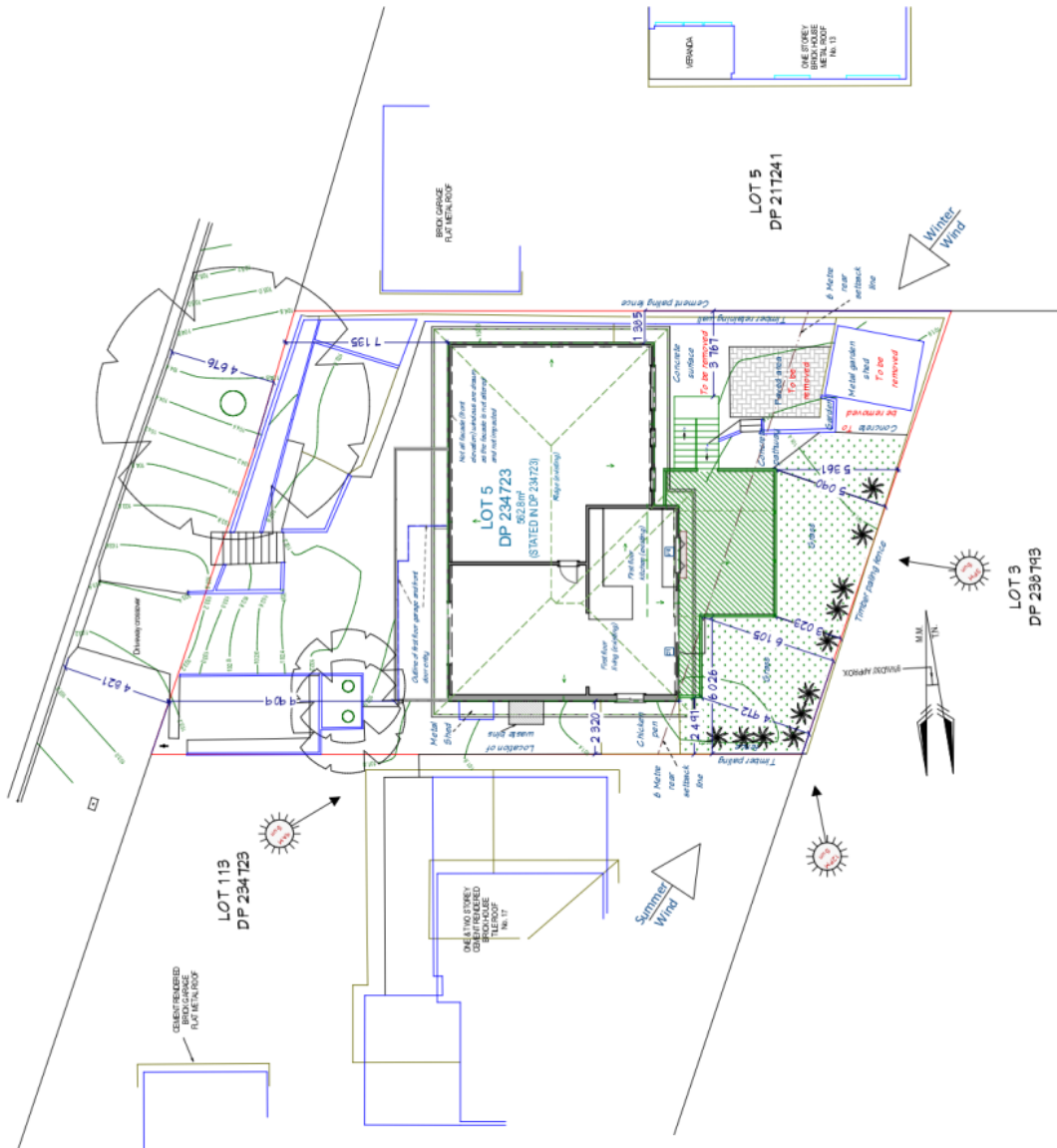
Reason: In order to maintain privacy to the adjoining / nearby properties.

West / front facade elevation
has not been drawn as it remains unaltered
and is not impacted by the proposed
development



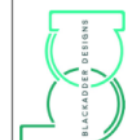
New first floor rear balcony: Elevation Plan

<p>Rear: first floor: Balcony addition Lot 5, DP 234 723, 15 Cousins Road Beacon Hill Allison & Dave Huxtable</p>	<p>Scale: 1:100 Size: A3 Date: 15/06/2020 Drawing No: 3; Elevations plan Version: 4.1</p>	<p>General Notes: Written dimensions take precedence over scaled dimensions. Builder to verify all dimensions on site. All work to be carried out in accordance with local council codes, BCA, Australian Standards and any relevant authorities.</p>
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Width; property frontage 20.51 metres					
Property / Site area	SQM	SQM	SQM	SQM	SQM
Existing dwelling including front balcony					562.8
New rear Balcony	30.4		179.0		31.8%
New rear external staircase	6.2		36.6		6.5%
Total new build				215.6	38.3%
Total dwelling including new build					
To be demolished:					
Rear landing & staircase	-11.1				
Shed and concrete slab under it	-23.6				
Other concrete surfaces	-16.3				
Paved area in backyard (south west)	-12.9				
Total to be demolished	-63.9				
Net increase of deep soil (new build minus demolition)	-27.3				-4.9%
Other structures:					
Metal Shed on north side of dwelling	1.2			1.2	0.2%
Total other structures					
Additional hard surfaces - rear yard:					
Patio (net of new balcony overlay)	0.5				
Concrete path on the southern side of house	11.7			12.2	2.2%
Total additional hard surfaces - rear yard					
Additional hard surfaces - Front of dwelling:					
Driveway	31.3				
Concrete surface; in front garden	30.1			61.4	10.9%
Total Additional hard surfaces - Front of dwelling					
Total of all buildings and hard surfaces				290.4	51.6%

New first floor rear balcony: Site and Site Analysis Plan



M: 0410 419 682
E: KEN@BLACKADDERDESIGNS.COM
W: WWW.BLACKADDERDESIGNS.COM
ABN: 32829136273

General Notes:
- All dimensions take precedence over scaled dimensions.
- All elevations marked as @ in metres (m).
- All dimensions take precedence over scaled dimensions.
- All work to be carried out in accordance with local council codes, BCA, Australian Standards and any relevant authorities.

Rear first floor: Balcony addition
Lot 5, DP 234723.
15 Cousins Road
Beacon Hill
Allison & Dave Huxtable

Scale: 1:200
Size: A3
Date: 02/06/2020
Drawing No: 6; Site & Site Analysis plan
Version: 4.1

ITEM 3.5	DA2020/0702 - 9 STEINTON STREET, MANLY - ALTERATIONS AND ADDITIONS TO AN ATTACHED DWELLING
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/717211
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0702 for alterations and additions to an attached dwelling on land at Lot 102 DP 586416, 9 Steinton Street, Manly, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0702
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Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot 102 DP 586416, 9 Steinton Street MANLY NSW 2095
Proposed Development:	Alterations and additions to an attached dwelling
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:	Grant Tyson Brits Ellisa Marjorie Baginska Bennett
Applicant:	Grant Tyson Brits Ellisa Marjorie Baginska Bennett

Application Lodged:	25/06/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/07/2020 to 17/07/2020
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.4 Floor space ratio: 22.5%
Recommendation:	Approval

Estimated Cost of Works:	\$ 346,000.00
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EXECUTIVE SUMMARY

The proposal is for the alterations and additions to an attached dwelling and involves a variation to the Floor Space Ratio development standard of the Manly Local Environmental Plan 2013 (MLEP 2013) of 22.5%. Despite the non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts from street frontages or adjoining properties.

As a result of the public exhibition of the application, Council received 5 submissions.

The proposed development is generally compliant with the numeric controls under the Manly Development Control Plan (MDCP).



The application is referred to the Northern Beaches Development Determination Panel for determination due to the contravention of the Floor Space Ratio development standard exceeding 10%.

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

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

PROPOSED DEVELOPMENT IN DETAIL

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

- Alterations and additions to the existing ground floor level to provide a new sitting room, internal access stairs, bath/laundry and an open plan living, dining and kitchen area; and
- Proposed new first floor addition to provide for three bedrooms, a bathroom, ensuite, walk-in robe, and internal stairs to the ground floor.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
Manly Development Control Plan - 3.2 Heritage Considerations
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing



Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 102 DP 586416 , 9 Steinton Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site is known as 9 Steinton Street, Manly and legally referred to as Lot 102 DP 586416 and consists of one (1) allotment located on the southern side of Steinton Street.</p> <p>The site is regular in shape with a frontage of 4.97m along Steinton Street and a depth of 30.887m. The site has a surveyed area of 152.3m².</p> <p>The site is located within the R3 Medium Density Residential zone and accommodates a single storey Federation-era terrace.</p> <p>The site is located in the <i>Pittwater Road Conservation Area</i> and within the vicinity of heritage items, all listed in Schedule 5 of Manly Local Environmental Plan 2013. The site is also mapped within the Northern Beaches Council Flood Hazard Map.</p> <p>The slope of the site is generally flat, with a slight fall from the rear boundary to the Steinton Street frontage.</p> <p>The site reflects a modified landscape setting with vegetation on site being largely within pots/planters.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mixture of heritage terraces, residential flat buildings, a guest house and a petrol station. The site is approximately 100m west of Manly Beach.</p>

Map:



SITE HISTORY

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

24 October 2019

Prelodgement meeting (PLM2019/0198) was held to discuss alterations and additions to an attached dwelling. Of relevance, the prelodgement minutes recommended that the proposed ridge height for the first floor should be further reduced, particularly following concerns of the additions being visible from the Steinton Street frontage. Further, the minutes advised that greater consistency with the requirements of the Manly LEP 2013 and Manly DCP was encouraged to amenity impacts including sunlight access and privacy on neighbouring properties.

25 June 2020

The subject application was lodged with Council.

29 July 2020

Site inspection undertaken by the assessing officer. The property owner was present at the time of the inspection.

31 August 2020

Council sends a letter to the applicant requesting the application to be withdrawn due to issues concerning building height, scale, sunlight access, amenity impacts, and heritage.

10 September 2020 - 25 September 2020

Email correspondence between the applicant and assessing officer to go through the issues raised.



25 September 2020

The applicant submits revised architectural plans that are received by Council seeking to address the concerns of the letter. Amendments included a reduction of the overall building height by 1.23m. In accordance with the *Northern Beaches Community Participation Plan*, re-notification is not required where the "changes result in a lesser or reduction of environmental impacts".

30 September 2020

Email correspondence from the assessing officer to those who had previously made submissions to inform them that the applicant had submitted revised architectural plans. These neighbours were provided the opportunity to comment on the changes made.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested, however following a request for the application to be withdrawn, the applicant submitted amended plans that were accepted by Council.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of</p>



Section 4.15 Matters for Consideration'	Comments
	<p>Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter 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 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 from 03/07/2020 to 17/07/2020 in



accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Ms Antonia Patricia Hawkins	11 The Shores WAY BELMONT NSW 2280
Mr Robert Nichols Mrs Ria Nichols	7 Steinton Street MANLY NSW 2095
Ms Vanessa Anna Maria Beenders	11 Steinton Street MANLY NSW 2095
Mr James Colin Holloway	11 Steinton Street MANLY NSW 2095
Ms Julie Anne Beagley	4 Steinton Street MANLY NSW 2095

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

- **Building Height**

Comment:

Submissions were received from the owners of No. 4, No. 5, No. 7 and No. 11 Steinton Street raising concerns that the height of the proposed development were inconsistent and incompatible with the rear additions approved on adjoining Federation terraces. In response to these concerns and those relating to overshadowing, the applicant amended the proposal to reduce the height by 1.66m. Whilst siting marginally higher (between 565-675mm) than the first floor additions of No.7 and No.11, the proposal is considered to be generally consistent with the prevailing building height of the area. The height of the building is to be a maximum of 7.35m and therefore is also technically compliant with the 11m development standard.

- **Solar Access and Natural Light**

Comment:

Submissions were received from the owner of No. 4, No. 5, No. 7 and No. 11 Steinton Street concerning the loss of solar access and natural light as a result of the proposed development. Based on the shadow diagrams submitted (prepared by Action Plans and dated 25 September 2020), all adjoining and adjacent properties with the exception of No. 7 Steinton Street continue to have an acceptable level of solar access. It is acknowledged that just over one third of the existing sunlight accessing the private open space areas of No. 7 Steinton Street will be impacted by the proposed development. Despite the non-compliance, the proposal has been considered acceptable. See discussion under Clause 3.4.1 (Sunlight Access and Overshadowing) of the Manly DCP in this report.

- **Heritage and Streetscape**

Comment:

Submissions were received from the owner of No. 4, No. 5, No. 7 and No. 11 Steinton Street with regards to the visibility of the proposed development from the frontages facing Steinton Street, Pittwater Road and Whistler Street. These concerns along with those raised by Council's Heritage Advisor resulting in amended plans being submitted to lower the height of the additions and remove the Steinton Street facing upper floor balcony. The amended proposal has been



considered by Council's Heritage Advisor who is satisfied that the proposal is acceptable subject to conditions. Detailed commentary from Council's Heritage Advisor is provided in the 'Referrals' section of this report. See also discussion under clauses 3.2 Heritage Considerations and 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly DCP in this report.

- **Eastern side setback breach**

Comment:

Concerns were raised in a submission by the owners of No. 7 Steinton Street with regards to the eastern side setback breach of Bedroom 1 on the First Floor. Despite the non-compliance, this addition has been considered as acceptable as it would not result in unacceptable amenity impacts towards the south adjoining property. See discussion under Clause 4.1.4 (Setbacks) of the Manly DCP in this report.

- **Rear setback breach**

Comment:

Concerns were raised in submissions by the owners of No. 5 and No. 11 Steinton Street with regards the proposed additions breaching the rear setback area. The proposed addition being 6.7m from the rear boundary has been considered acceptable and consistent with existing setbacks of the terraces on either side of the subject site. See discussion under Clause 4.1.4 (Setbacks) of the Manly DCP in this report.

- **Demolition of outhouse**

Comment:

Concerns were raised in a submission by the owners of No. 11 Steinton Street with regards to the demolition of the brick outhouse to the rear of the site. Both the submitted Heritage Impact Statement and comments received by Council's Heritage Advisor have not raised any concern with the removal of this structure. The structure looks to be in a deteriorating condition with loose brickwork, rusting roof and rotting timber trim. Consideration has been given that this structure is not visible from Steinton Street or Whistler Street. As the outhouse appears to have a common wall with the outbuilding at 11 Steinton Street, Manly a condition has been recommended for this wall to be retained and for a Dilapidation Report to be prepared prior to the issue of a Construction Certificate and again prior to the issue of an Occupation Certificate.

- **Floor Space Ratio breach**

Comment:

Concerns were raised in a submission by the owners of No. 5 Steinton Street with regards to the breach in the floor space ratio standard. The proposed development breaches this standard by 26m². Consideration has been given that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. See further discussion in this report under Clause 4.6 of the Manly LEP.

- **Impacts on on-street parking**

Comment:

Concerns were raised in a submission by the owners of No. 5 Steinton Street with regards to the impact on on-street parking as a result of the proposed development. Consideration has been given that the resultant two storey, 4 bedroom dwelling will not be unreasonable development



for its context. It should also be noted that there are examples of existing semi's in this row of terraces that have yet to construct a first floor addition that are currently 3 bedroom dwellings. It has been considered that Council should apply its exception to the off-street parking requirement as any parking on the site would adversely impact upon the hertiage listed conservation area. See further discussion under Clause 3.2 Heritage Considerations of the Manly DCP.

Amended Plans

Amended Plans were received on the 28 September 2020. These amended plans consisted of changes including the reduction of the overall building height by 1.23m. Whilst the *Northern Beaches Community Participation Plan* refers to re-notification not being required for amendments where the "changes result in a lesser or reduction of environmental impacts", courtesy was extended to those neighbours who previously made submissions to allow for the opportunity to respond to the amended plans. The amended plans were also uploaded to Council's website. In response to the amended plans, submissions were received from the owners of No. 4, No. 5, No. 7 and No. 11 Steinton Street. These submissions were reviewed, and no other issues were identified for further consideration than those already discussed above.

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>Approval without conditions</p> <p><i>The application has been assessed in consideration of the Coastal Management Act 2016 Environmental Planning Policy (Coastal Management) 2018. It has also been assessed against the requirements of the Manly LEP 2013 and DCP 2013.</i></p> <p>Coastal Management Act 2016 <i>The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</i></p> <p><i>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</i></p> <p>State Environmental Planning Policy (Coastal Management) 2018 <i>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</i></p> <p><i>The subject land has been included on the 'Coastal Use Area' map but not been included on the Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) SEPP. Hence, Clauses 14 and 15 of the CM SEPP apply for this DA.</i></p> <p><i>Comment:</i></p> <p><i>On internal assessment and as assessed in the submitted Statement of Environmental E</i></p>

Internal Referral Body	Comments
	<p><i>prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated June 2020 , the L requirements under clauses 14 and 15 of the CM SEPP.</i></p> <p><i>As such, it is considered that the application does comply with the requirements of the St Planning Policy (Coastal Management) 2018.</i></p> <p>Manly LEP 2013 and Manly DCP 2013</p> <p>Foreshores Scenic Protection Area Management</p> <p><i>The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on C Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Pro Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Man apply to proposed development on the site.</i></p> <p><i>On internal assessment and as assessed in the submitted Statement of Environmental E prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated June 2020 , the L requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 20 section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</i></p> <p><i>As such, it is considered that the application does comply with the requirements of the Cl (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Fo Protection Area of the Manly DCP 2013.</i></p>
NECC (Development Engineering)	<p>Approval subject to conditions</p> <p><i>Development Engineering raises no objection to application subject to the condition of co</i></p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Approval subject to conditions</p> <p><i>The proposed development is for alterations and additions. Subject to conditions, the pro with Council's flood prone land controls.</i></p>
Strategic and Place Planning (Heritage Officer)	<p>Approval subject to conditions</p> <p>HERITAGE COMMENTS</p> <p><i>Discussion of reason for referral</i></p> <p><i>The proposal has been referred to Heritage as the subject site is located in the Pittwater Conservation Area and within the vicinity of heritage items, all listed in Schedule 5 of A Environmental Plan 2013:</i></p>

Internal Referral Body	Comments															
	<p>Item I202 - House - 80 Pittwater Road</p> <p>Item I203 - House - 82 Pittwater Road</p> <p>Details of heritage items affected</p> <p>Details of the Conservation Area and the heritage items as contained within the Manly Heritage Inventory are:</p> <p>Pittwater Road Conservation Area <u>Statement of Significance:</u> This street pattern is distinctive and underpins the urban character of the area. The streets are unaltered in their alignment, although the names of Malvern, Pine and North Steyne are for what were Whistler, Middle Harbour and East Steyne respectively. <u>Physical Description:</u> The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century residential architecture of generally one or two floors - although there are exceptions - a four storey private hotel. The streetscape provides a 19th century atmosphere due to its scale and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed separately. Adjacent streets generally continue the consistent pattern of one and two story residential cottages, with the occasional terrace. The streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical vegetated backdrop.</p> <p>Item I202 - Item I203 - House <u>Statement of significance:</u> This building is a good example of a Late Victorian design. This item is of local cultural significance as it demonstrates the pattern of development of Manly and in particular the development of Pittwater Road. Constructed on the main road it is associated with development of the introduction of the tram service. One of a pair, it is an uncommon example of its kind and contributes to the overall character of the Pittwater Road Conservation Area <u>Physical description:</u> One of a pair (Nos 80 and 82) of single storey late Victorian period weatherboard semi-detached cottages in the Villa style. The cottages have a hipped roof with dominant symmetrical gables and bull nosed awning between. Gables have decorative barge boards and timber louvered windows in front wing have 2 pane double hung sashes and a sheet metal roof.</p> <p>Other relevant heritage listings</p> <table><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</td><td>No</td><td></td></tr></table>	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	No	
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	No															

Internal Referral Body	Comments		
	Buildings of Significance		
	Other	N/A	
	Consideration of Application		
	The proposal is for alterations and additions to the existing dwelling, which is a part of F style row of 6 terrace dwellings and located within the Pittwater Road Conservation Area. The property also is within the vicinity of two heritage listed dwellings to the west, facing Pittwater Road.		
	It is acknowledged that, the proposed works are mainly confined to the rear and there is no impact to the front facade of the dwelling, however, it is believed that the height of the first floor extension is substantial and visible from the street level. It was recommended in the PLM notes that the height for the rear first floor extension should be investigated, yet, even higher ridge height was proposed with this application. The expected outcome was that, the proposed first floor extension designed to preserve the single storey form of the street facade. A photomontage was requested in the PLM notes, in order to help in assessing the visual impact on the street from a heritage perspective, it is considered that, the proposal is not satisfactory in its current form as the proposed additions will result in excess bulk and scale in comparison with the adjacent dwellings.		
	For the above reasons, Heritage recommends amendments to the drawings and cannot approve the application in its current form.		
	Amended Plans - Received 30 September 2020		
	Revised drawings, dated 25 September 2020, have been reviewed, and it is considered that the amended plans have resolved a number of concerns Heritage had with the proposal.		
	Therefore, the proposal is acceptable on heritage grounds, subject to a condition.		
	<u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes		
Further Comments			
COMPLETED BY: Oya Guner, Heritage Advisor			
DATE: 14 July 2020, Amended 02 October 2020			

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of approval.



External Referral Body	Comments
	consent.

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. A374662_03, dated 21 September 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 who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

SEPP (Coastal Management) 2018

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

14 Development on land within the coastal use area

(1)

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

Comment:

The proposed development will not cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunneling or loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The site has not been identified to contain any Aboriginal cultural heritage, practices or places. The proposed development will also not have an adverse impact on the cultural and built environment heritage. It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact on the above mentioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment of Manly.

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

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



coastal hazards on that land or other land.

Comment:

The proposed development is not likely to cause increased risk of coastal hazards on the subject site or other land.

As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	7.36m	-	Yes
Floor Space Ratio	FSR: 0.75:1 (114.225m ²)	FSR: 0.91:1 (140m ²)	22.5%	No

Compliance Assessment

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

Description of non-compliance:

Development standard:	Floor space ratio
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Requirement:	0.75:1 (114.225m ²)
Proposed:	0.91:1 (140m ²)
Percentage variation to requirement:	22.5%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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



required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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



The applicants written request argues, in part:

- The proposal will maintain the existing single storey building facade and roof form, with the upper floor to provide an additional setback from the front boundary. The bulk and scale of the proposed development is in keeping with the desired future character of the locality.
- The proposed low profile roof form assists with minimising the visual bulk of the development.
- The siting and bulk and scale of the proposal is considered acceptable given the site constraints posed by the smaller lot size, and the proposal is not considered to result in any unreasonable adverse impacts for neighbouring properties or adjoining public land.
- The proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern.
- The proposed development will provide for residential amenity within a built form which is compatible with the streetscape of Steinton Street.
- The proposed new development is considered to promote good design and enhance the residential amenity of the buildings' occupants and immediate area.
- The proposed development will not result in the loss of any substantial views for neighbouring properties.

It is accepted that despite the variation to the floor space ratio development standard, that the proposed built form maintains a level of consistency with recent first floor developments undertaken towards the rear of adjoining terraces. Recognition is also given that the proposal with its low profile roof assists with minimising the visual bulk, in particular with reference to the desired streetscape character from the Steinton Street frontage. In considering the site constraints, the proposal is largely seen to not result in unreasonable adverse impacts for neighbouring properties. It is further accepted that the proposed development promotes good design by enhancing the internal amenity for the buildings' occupants.

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

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

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

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

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

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

Comment:

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



provided below.

Objectives of development standard

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

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

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

Comment:

The proposed first floor addition being 7.36m when measured from ground level (existing) to the highest point of the building is compliant with the height of buildings development standard. The height of buildings development standard is designed to control building height ensuring the development is consistent with that of the surrounding area. Despite the site being mapped with a maximum building height of 11m, a reduced height must be applied to this row of Federation-era terraces to ensure new additions are not visible from the Steinton Street frontage. In this regard, the proposed development is seen to have a relatively consistent height compared with the adjoining terraces, with a maximum reduced level (RL) of RL12.707. The proposed development also largely incorporates setbacks that are consistent with neighbouring terraces to also ensure that the bulk and scale of the development does not result in any unreasonable impact on the existing and desired streetscape character of the locality.

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

Comment:

As discussed above, it is not considered that the proposal will result in any unreasonable bulk or scale within the locality. Furthermore, the proposal is not considered likely to obscure any important landscape or townscape features.

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

Comment:

With the proposal being bookended by the first floor additions of No. 7 and No. 11 Steinton Street, the proposed development will not be visually prominent from the Whistler Street, Steinton Street or Pittwater Road frontages. As such, the proposed additions that are of a contemporary design are not seen to dominate or challenge heritage details or character of the Federation-era terraces. The proposed development does not seek the removal of any native vegetation, rather it seeks to increase the amount of landscaped area on site. In this regard, the proposal seen to enhance the site with vegetation and provide for infiltration of water thereby minimising stormwater run-off.

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

Comment:



The proposal has been assessed with regard to amenity impacts and has been found to maintain a reasonable level of amenity within the locality. The proposal will not result in any unreasonable adverse impacts on the use or enjoyment of adjoining land and the public domain.

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

Comment:

Not applicable.

Zone objectives

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

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

Comment:

The proposal seeks the alterations and additions to an existing attached dwelling, which is a permissible use in this zone. The additional floor area is considered to provide for the current housing needs of the occupants of the site and is compatible with that of adjoining terraces.

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

Comment:

The medium density residential environment within this particular area of Manly provides a mixture of dwelling types spanning from dwelling houses to residential flat buildings. The proposal seeks to maintain the building as an attached dwelling.

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

Comment:

Not applicable.

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

Comment:

The proposed development is seen to appropriately preserve the heritage significance of the Federation-era terrace, while also allowing it to be revitalised to improve the building's amenity and meet the housing demands of its occupants. In this regard, the proposal is considered to be an acceptable adaption that is sympathetic to the existing building and its hertiage context.

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

Comment:



Not applicable.

Conclusion:

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

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

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

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

5.10 Heritage conservation

The subject site is located within the *Pittwater Road Conservation Area* and is within the proximity of a number of heritage items listed in Schedule 5 of the Manly LEP 2013 including: Item I202 at 80 Pittwater Road, Manly and Item I203 at 82 Pittwater Road, Manly.

In accordance with clause 5.10(4) of the Manly LEP 2013, the consent authority must consider the effect of the proposed development on the heritage significance of the item or area concerned prior to granting consent to the proposal. In this regard, the proposal has been considered by Council's Heritage Advisor who is satisfied that the proposal is acceptable subject to conditions. Detailed commentary from Council's Heritage Advisor is provided in the 'Referrals' section of this report.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 152.3m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/150m ²	1	-	Yes
	Dwelling Size: min: 112sqm (4 bedrooms)	140sqm	-	Yes
4.1.2.1 Wall Height	North: 9m	6.9m	-	Yes
	South: 9m	6.2m	-	Yes
	East: 9m	6.9m	-	Yes
	West: 9m	6.8m	-	Yes
4.1.2.2 Number of Storeys	3	2	-	Yes

4.1.2.3 Roof Height	Height: 2.5m	0.46m	-	Yes
	Pitch: maximum 35 degrees	maximum 2 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback (1.4m as existing)	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.3m (based on wall height)	0m	100%	No
	West: 2.26m (based on wall height)	0m	100%	No
	Windows: 3m	1m	67%	No
4.1.4.4 Rear Setbacks	8m	6.7m	16.3%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area	21.1% (32.2m ²)	58%	No
	Open space above ground 25% of total open space	0%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 30% of open space	77%	-	Yes
	1 native trees	No trees	1 native tree	No
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	No spaces	2 spaces	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes

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

Detailed Assessment

3.2 Heritage Considerations

Merit consideration:

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

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*



- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

Comment:

The development subject to the conditions of consent will retain the original external fabric of the terrace as viewed from the Steinton Street frontage. The application is also subject to conditions of consent to ensure that any proposed changes to the front facade colour scheme are submitted and approved by Council's Heritage Advisor's prior to the issue of a Construction Certificate. The proposal is not seen to unreasonably impact upon views and conditions have also been placed to ensure the adequate protection measures for any Aboriginal items uncovered during works.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

Comment:

With sight lines (eye height is 1.6m above floor level) provided on submitted plans and the bulk of the development located to the rear of the site (Figure 1), the proposal is not considered to adversely impact upon the heritage significance of the Federation-era terraces or the associated Pittwater Road Conservation Area. Whilst the existing development at No. 7 Steinton Street is expected to largely obscure the proposed development, a minor portion may be visible from the Whistler Street frontage (Figure 4). As such, the proposed development is considered to be of an appropriate design to ensure it is not visually prominent from the streetscape.

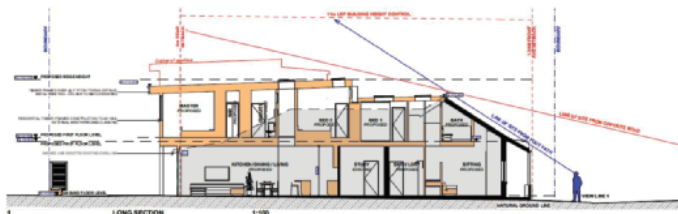


Figure 1: Section diagram indicating sight/view lines in blue and red.



Figure 2: Photo taken from the northern side footpath of Steinton Street on 29 July 2020.



Figure 3: Photo taken from the footpath on the opposing corner where Whistler Street and Steinton Street on 29 July 2020.



Figure 4. Photo taken from the eastern side footpath of Whistler Street on 29 July 2020.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

Comment:

Whilst a portion of the building's original fabric is being removed to the rear of the site, it is not a portion of the building that is visible from any street frontage. As detailed above, the proposed development is not considered to detract from the significance of any heritage item or the conservation area.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

Comment:

Not applicable.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

Comment:

The proposed development is largely considered to be a contemporary design that enhances the internal amenity for the buildings' occupants, while also not dominating or challenging the heritage character of the Federation-era terrace when viewed from Steinton Street. The proposal has also been reviewed by Council's Heritage Advisor who is satisfied that the proposal is acceptable subject to



conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this clause and is supported on merit.

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

Based on the shadow diagrams submitted (prepared by Action Plans and dated 25 September 2020), all adjoining and adjacent properties with the exception of No. 7 Steinton Street continue to have a compliant level of solar access. It is acknowledged that more than one third (38.5%) of the existing sunlight accessing the private open space areas and the west facing ground floor living rooms windows of No. 7 Steinton Street will be impacted by the proposed development between 9am to 3pm at winter solstice (21 June).

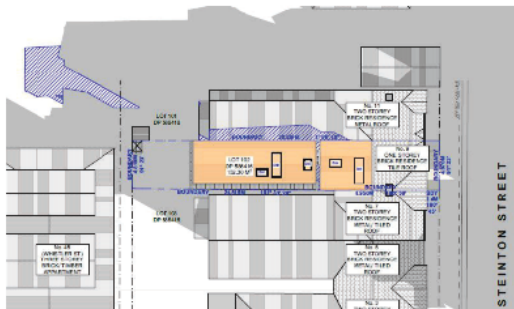


Figure 5. Shadow Diagram at 9am (21 June) depicting the extent of new shadows in blue.

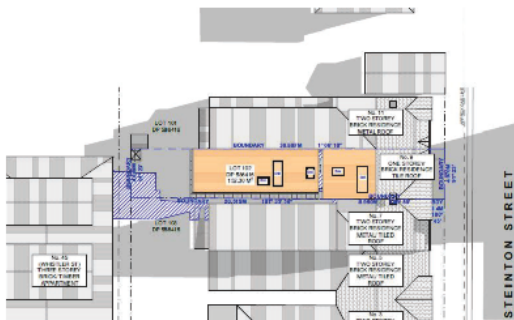


Figure 6. Shadow Diagram at 12pm (21 June) depicting the extent of new shadows in blue.

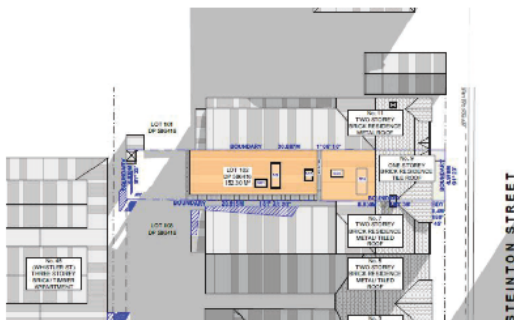


Figure 7. Shadow Diagram at 3pm (21 June) depicting the extent of new shadows in blue.

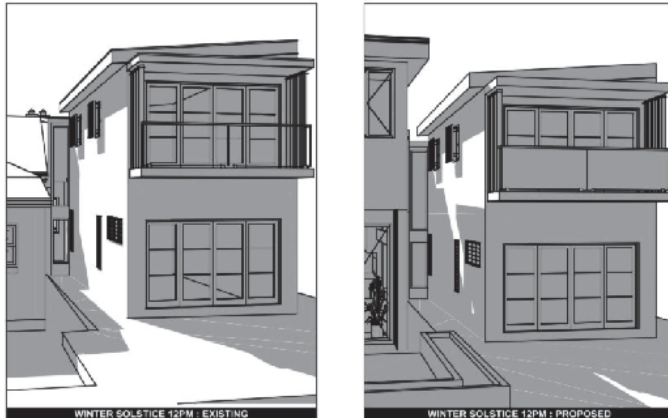


Figure 8: 3D view shadow diagrams demonstrating the impact to the living room windows of No. 7 Steinton Street.

Merit consideration:

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

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

Comment:

The proposal is seen to provide equitable access to light and sunshine, when accounting for the existing site constraints and the compliant building height of the development. Such constraints include the need from a heritage perspective, to ensure that the proposed additions were not visible from the Steinton Street frontage, which limits the bulk of the additions to the rear of the site. In addition, the private open space areas and associated living rooms or the adjoining terraces being south facing are considered to be highly vulnerable to overshadowing due to the lot configuration and the medium density zoning of the site which results in sunlight being harder to protect. Further, it should be noted that the proposal is of a similar scale to the existing first floor additions of adjoining terraces and that these developments have contributed to limiting the extent of remaining solar access available for the subject site and those neighbouring.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

As discussed above, existing site constraints make compliance with the numerical control requirements difficult to achieve for the purposes of constructing a first floor addition. As seen in the submitted shadow diagrams, the extent of the proposed solar access impacts to the rear garden of No. 7 Steinton Street are largely limited to the afternoon of 21 June. Further, the reduction of existing sunlight to the west facing ground floor living rooms windows of No. 7 Steinton Street appears to be limited to the period around midday on the winter solstice, as the elevational shadow diagrams indicate that these



windows currently do not receive light during 9am or 3pm. In this regard, the proposal is considered to continue allowing adequate sunlight towards No. 7 Steinton Street.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

With the exception of a portion of the bed 1 addition, the majority of the first floor addition has been setback 1m from the eastern side boundary. The site having a lot width of 4.97m and the existing building being an attached terrace, results in difficulties with facilitating a greater level of modulation or increased setbacks. Consideration has been given that submitted plans reflect a first floor that attempts to provide adequate bedroom sizes, ceiling heights, adequate internal amenity and cavity spaces for services. A further reduction to the overall building height or an increase to the eastern side setback would not seem to lead to a more favourable design outcome or a compliant solar access arrangement.

The proposed development is considered acceptable on merit and consistent with the objectives of this clause, however for avoidance of doubt, an assessment against the relevant planning principles established in the *Benevolent Society v Waverley Council (2010) NSWLEC 1082* has also been used in the assessment of sunlight.

The Benevolent Society v Waverley Council [2010] NSWLEC 1082

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Comment: The subject site, including all adjoining and adjacent properties fall within a medium density residential zoning. With this density in mind, and when accounting for the existing site constraints and lot configuration discussed above, the private open space areas of No. 7 Steinton Street is considered to be vulnerable to being overshadowed.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Comment: The shadow diagrams indicate that amount of existing sunlight retained in the rear private open space of No. 7 Steinton Street would be 100% at 9am on June 21. The amount of sunlight lost at 9am is 0m². The amount of sunlight retained in this rear private open space area would be 23% (3.7m²) at 12pm. The amount of sunlight lost at 12pm is 77% (12.5m²). Finally, the amount of sunlight retained in this area at 3pm would be 53% or 1.9m², with the amount of sunlight lost being 47% (1.7m²).

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*



Comment: The proposed first floor addition that is causing the shadowing impact is compliant with the relevant building height and wall height requirements. Overall, the development is not considered to be unreasonable and is an appropriate response to the spatial characteristics of the site and neighbouring sites. Should the development be situated further forward, it would likely result in streetscape concerns from a heritage perspective.

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5 degrees or more. (This is because sunlight at extremely oblique angles has little effect.) For a window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.*

Comment: The proposed development reduces the level of sunlight available to the west facing ground floor living rooms windows of No. 7 Steinton Street at around midday on the winter solstice. Consideration has been given that retaining sunlight to half of the glazed area of these windows would be difficult to achieve, given the context of these sites being attached dwellings, as well as the width and the orientation of the lots. These factors are also applicable to the retention of sunlight in the rear private open space area.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comment: The subject site is largely seen to be without any established vegetation such as trees within the rear yard that could further contribute towards overshadowing. Consideration has also been given that the requirement for 1 native tree to be planted on site, should be varied on account that sunlight is limited in this area which may impact on the tree's longevity. Shadowing caused by existing side boundary fences has also been taken into account.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

Comment: As discussed earlier in this report, the adjoining terraces either side of the subject site have undergone recent developments of a similar scale to that proposed as part of this application. In this regard, existing solar access is currently limited to the rear private open spaces of these terraces.

4.1.3 Floor Space Ratio (FSR)

Whilst the proposed floor area does not exceed the maximum variation to FSR for undersized lots as described under this clause, the development is technically non-compliant with the FSR requirement as prescribed under Clause 4.4 of the Manly LEP 2013. Refer to the discussion under Clause 4.6 of this report for the relevant considerations concerning the varying of this development standard.

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

Description of non-compliance

Side Setback Requirement:



East: 2.3m (based on wall height)
West: 2.26m (based on wall height)

Side Setback Proposed:

East: 0m
West: 0m, increasing to 1m

Rear Setback Requirement:

8m

Rear Setback Proposed:

6.7m

Merit consideration:

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

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

Comment:

The proposed additions are located behind the front portion of the existing building. This portion is constructed to each side boundary, and as a result the proposed non-compliance will not be readily visible from Steinton Street. The proposal will therefore not impact upon the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal is considered to ensure and enhance local amenity through privacy measures such as indicating translucent glazing and increased sill heights to certain windows along the eastern facade to avoid overlooking towards No. 7 Steinton Street. The proposed rear facing first floor bedroom windows are also not considered to result in any unreasonable privacy impacts towards the apartment building at 45 Whistler Street. The non-compliances are also not seen to result in unreasonable shadowing over view impacts when accounting for the constraints of the site. Further, the proposed additions are largely screened from the Steinton Street and Whistler Street frontages, and therefore will not impact on the streetscape or the levels of visibility around street intersections.



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

Comment:

The bulk of the proposed development is sited in the area where the existing building is currently located. The flexibility applied to the 1.3m breach to the rear setback and the bedroom addition (Bed 1) being within the eastern side setback, is not considered to result in unreasonable amenity impacts to adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development enhances the site with additional landscaped areas, in particular in the rear yard which is to be turned from being predominantly paved to an area that allows for lawn as well as the planting of vegetation including trees.

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

Comment:

The site is not mapped as being bush fire prone.

Based on the above, the proposed development is considered acceptable on merit and consistent with the objectives of this clause in this particular instance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Total Open Space Requirement:

Total Open Space: 50% of site area (76.15m²)

Existing:

Total Open Space: 23.6% of site area (35.9m²)

Proposed:

Total Open Space: 21.1% of site area (32.2m²)

Minimum Tree Planting Requirement:



1 native tree

Proposed:

No native trees

Merit consideration:

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

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

Comment:

The site currently contains a modified landscape arrangement that is typical of dwellings in this particular area of Manly. The proposal does not seek to removal any native vegetation or trees and therefore is not seen to impact upon native fauna habitats.

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

Comment:

The proposal seeks 77% of the total open space to be landscaped area. This is greater than the 30% requirement prescribed under this clause and also results in an increase in landscaped areas than what currently exists on site.

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

Comment:

The proposed open space and landscape arrangement is considered acceptable to maintain and enhance the amenity of the site, the streetscape and the surrounding area.

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

Comment:

The increase to landscaped area on site is seen to maximise water infiltration and minimise stormwater runoff.

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

Comment:

The proposed landscaping will minimise the spread of weeds within the locality.

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



Comment:

The proposal increases landscaping on site and does not seek the removal of any native vegetation or trees and is therefore not considered to reduce wildlife habitats or corridors.

Based on the above, the proposed development is considered acceptable on merit and consistent with the objectives of this clause in this particular instance.

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

Consideration has been given that general exceptions to off-street vehicle parking requirement should be applied for the proposed development, as any parking on the site would adversely impact upon the heritage listed conservation area.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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 \$3,460 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$346,000.

CONCLUSION

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

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

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

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



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

Council is satisfied that:

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

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

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2020/0702 for Alterations and additions to an attached dwelling on land at Lot 102 DP 586416, 9 Steinton Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA03, Rev. B (Site, Roof, Sediment Erosion, Waste Management, Stormwater Concept Plan)	25 September 2020	Action Plans



DA04, Rev. B (Existing Ground Floor Plan)	25 September 2020	Action Plans
DA05, Rev. B (Proposed Ground Floor Plan)	25 September 2020	Action Plans
DA06, Rev. B (Proposed First Floor Plan)	25 September 2020	Action Plans
DA07, Rev. B (North, East Elevation)	25 September 2020	Action Plans
DA08, Rev. B (South, West Elevation)	25 September 2020	Action Plans
DA09, Rev. B (Long, Cross Section)	25 September 2020	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Heritage Impact Statement	20 March 2020	Brad Inwood Architects
BASIX Certificate A374662_03	21 September 2020	Action Plan

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Council Waste Management Plan	No date.	No author.

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. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	17/08/20

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).



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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.



4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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



FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$3,460.00 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 \$346,000.00.

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

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

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

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

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

6. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION
CERTIFICATE****7. Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. Boundary Identification Survey

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

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

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

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

9. Colour scheme to front facade

Proposed colour scheme for the front facade should be provided prior to any approval.

Details demonstrating compliance with this condition to be submitted to the Council's Heritage Advisor's satisfaction.

Reason: To preserve the heritage significance of the the conservation area and the items within the vicinity.

10. Flooding

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

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 5.6m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-



prone property and reduce public and private losses in accordance with Council and NSW Government policy.

11. **Compliance with Standards**

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

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

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

12. **Sydney Water "Tap In"**

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

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

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

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

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

13. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

14. **Terracotta tile ridge capping**

The north facing terracotta tile ridge capping (RL 11.57) to the roof existing terrace must be retained. Should these tiles be damaged or require replacement, a equivalent terracotta tile must be used.

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

Reason: To ensure the protection of heritage, particular the character of the building as viewed from Steinton Street.

15. **Details of Skylight (S05)**

If the skylight (S05) proposed for inclusion to the stairway is able to be opened, it should be hinged on the northern side, and should only be able to be opened to a maximum of 250mm. Plans are to be notated accordingly prior to the issue of the Construction Certificate.



Reason: To ensure the protection of heritage, particular the character of the building as viewed from Steinton Street.

16. **Party wall to outbuilding (shed)**

Any partywall that is shared between the outbuilding (shed) on No. 9 Steinton Street, Manly and No. 11 Steinton Street, Manly is to be retained.

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

Reason: To protect the structural integrity of the outbuilding at No.11 Steinton Street, Manly.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Pre-Construction Dilapidation Report**

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

Properties:

- o No. 7 Steinton Street, Manly NSW 2095 (Lot 103 DP 586416)
- o No. 11 Steinton Street, Manly NSW 2095 (Lot 101 DP 586416)

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Road Reserve**

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

Reason: Public safety.



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

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

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

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

20. **Demolition Works - Asbestos**

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

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

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

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

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

21. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to 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.

22. **Waste Management During Development**

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

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

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

23. **Works to cease if item found**

Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: To protect Aboriginal Heritage.

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

24. **Stormwater Disposal**

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

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

25. **Post-Construction Dilapidation Report**

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

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

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

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

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

26. **Window Glazing**

The window glazing of W01, W02, W03, W04, W05, W09 and W07 are to be of translucent glazing.



Documentary evidence of consistency with this requirement is to be provided to the Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect the privacy of the occupants and neighbours.

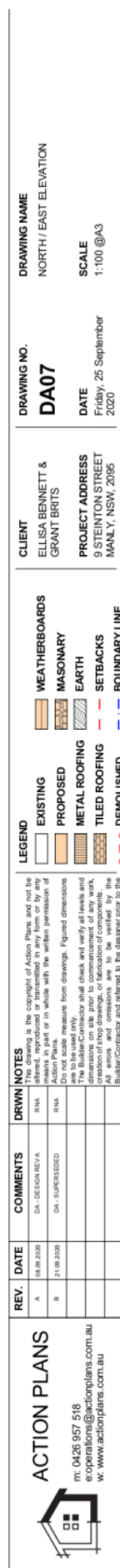
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

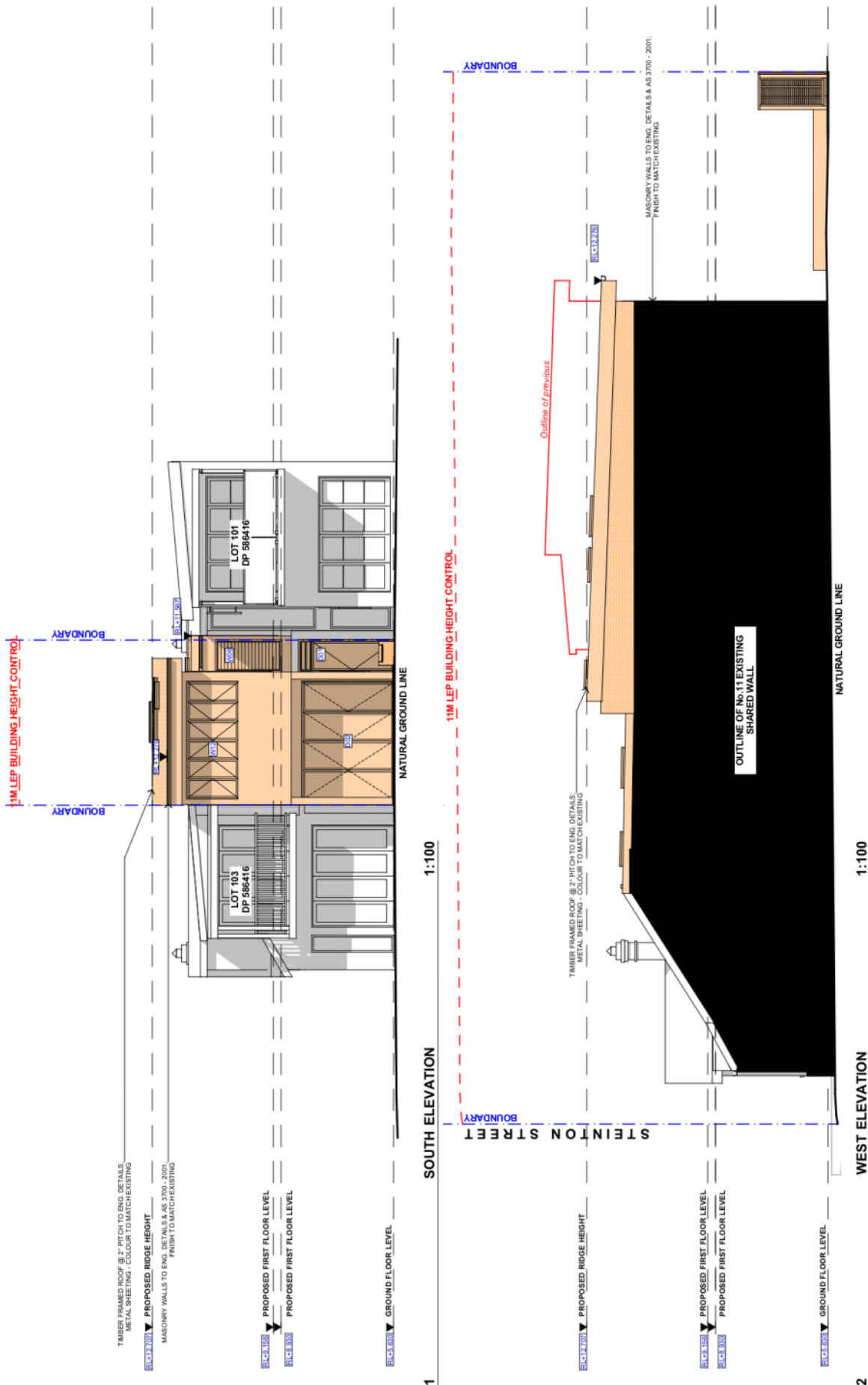
27. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved landscaping arrangement.

Reason: To maintain local environmental amenity.







REV.	DATE	COMMENTS	DRWN	NOTES	LEGEND	CLIENT	DRAWING NO.	DRAWING NAME
A	18.09.2020	DA - DESIGN REVIEW	RNA	RNA	EXISTING	ELLISA BENNETT & GRANT BRITS	DA08	SOUTH / WEST ELEVATION
B	21.09.2020	DA - SUPERSEDED	RNA	RNA	PROPOSED	PROJECT ADDRESS 9 STEINTON STREET MANLY, NSW, 2095	DATE Friday, 25 September 2020	SCALE 1:100 @A3
					WEATHERBOARDS			
					MASONRY			
					EARTH			
					METAL ROOFING			
					SETBACKS			
					DEMOLISHED			

 ACTION PLANS

m: 0426 957 518
e: operations@actionplans.com.au
w: www.actionplans.com.au

Vaughan Milligan Development Consulting Pty Ltd

APPENDIX
CLAUSE 4.6 – FLOOR SPACE RATIO

Vaughan Milligan Development Consulting Pty Ltd

**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

**9 STEINTON STREET, MANLY
FOR PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING
ATTACHED DWELLING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE
RATIO CONTROL AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL
PLAN 2013**

For: Construction of alterations and additions to an attached dwelling
At: 9 Steinton Street, Manly
Owner: Ellisa Bennett & Grant Brits
Applicant: Ellisa Bennett & Grant Brits
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard it is requested Council support a variation with respect to compliance with the maximum floor space ratio as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the floor space ratio of a building within this area of the Manly locality to a maximum floor space ratio of 0.75:1.

Due to the small size of the site (152.3m²), the proposed new works which present a gross floor area of 146.79m², will result in a floor space ratio of 0.96:1 or a variation of 32.565m² or 28.5% to the control.

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.4 of the LEP a development standard?

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

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

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- (b) Clause 4.4 relates to the maximum floor area a building which reflects the density of the development. Accordingly, Clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

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

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

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

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

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

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

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Clause 4.6(2) of the LEP provides:

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

Clause 4.4 (the Maximum Floor Space Ratio Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the maximum floor space ratio development standard pursuant to Clause 4.4 of MLEP which specifies a maximum floor space ratio of 0.75:1 in this area of Manly. The proposed new development will result in a maximum floor space ratio of 0.96:1 and exceed the floor space ratio control by 32.565m² or 28.5%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the

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

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of the LEP provides:

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

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.4 of the LEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing attached dwelling, which is consistent with the stated Objectives of the R3 Medium Density Residential Zone, which are noted over as:

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- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*
- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants.

The new works provide a bulk and scale which is in keeping with the desired future character of the locality, with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum floor space ratio control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed new works will not see any unreasonable impacts on the views enjoyed by neighbouring properties.

The works will not see any unreasonable adverse impacts on the solar access enjoyed by adjoining dwellings.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum floor space ratio standard contained in Clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies a maximum floor space ratio of 0.75:1 in this area of Manly.
- 5.3 The proposed alterations and additions to the existing attached dwelling will have a floor space ratio of 0.96:1, which exceeds the floor space ratio control by 32.565m² or 28.5%.

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6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are*

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applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is Clause 4.4 of MLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
 3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.4 and the objectives for development for in the R3 zone?
 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes Clause 4.4 of MLEP?

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7.0. Request for Variation

7.1 Is Clause 4.4 of MLEP a development standard?

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

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

- (b) Clause 4.4 relates to the floor area of the building which reflects the density of the development and accordingly Clause 4.4 is a development standard.

7.2 Is compliance with Clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st & 2nd ways identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) The second way *Wehbe* is to establish that the objectives of the standard are not relevant to the development
- (c) Each objective of the maximum floor space ratio standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The objective of Clause 4.4 (1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for alterations and additions to an existing attached dwelling which presents a compatible scale and form to the surrounding development, which assists in respecting the existing streetscape character and the surrounding development pattern.

The surrounding area is predominantly characterised by one and two storey development.

The proposal seeks to accommodate the new development within a compatible building form, with suitable setbacks to property boundaries.

The proposed low profile roof form reflects the contemporary design of the development, whilst complementing existing surrounding development. The building form with a low profile roof & matching external finishes are considered to suitably reduce the visual bulk of the dwelling.

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The proposal will be consistent with and complement the existing attached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

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

The proposal will not see the loss of any significant vegetation and as the streetscape appearance of the existing attached dwelling remains largely unchanged, the proposal will not obscure any important townscape features in the locality.

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

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

As the proposal will result in an increase in the available area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the existing landscaped area is unchanged, the site is considered to maintain an appropriate balance between the site's landscaping and the built form.

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

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land. The proposal is supported by shadow analysis which confirms that equitable access to daylight and solar access is maintained for the surrounding properties.

The subject and adjoining properties enjoy views to the east towards Manly Beach. The site and surrounding properties receive limited views due to the flat terrain, and the proposal will not remove any substantial view opportunities for the surrounding properties.

The proposal will not result in any loss of views from nearby public land.

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

The site is not located within a business zone and by providing for the construction of alterations and additions to an existing dwelling, is not contrary to the viability

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of any local business activity. This objective is not considered to be relevant to the proposal.

Despite the variation to the floor space ratio control, we are of the view that the proposal is consistent with the objectives of the development standard.

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

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning 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.*

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development*

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

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

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

- The proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for residential amenity within a built form which is compatible with the streetscape of Steinton Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new development is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).
- The proposed development will not result in the loss of any substantial views for neighbouring properties (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum floor space ratio control.

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

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in

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[141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.4 and the objectives of the R3 Medium Density Residential Zone?

- (a) Section 4.2 of this written request suggests the 1st & 2nd tests in Wehbe are is made good by the development.
- (b) Each of the objectives of the R3 Medium Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation of to the floor space ratio control, the proposed alterations and additions to the existing attached dwelling will be consistent with the individual Objectives of the R3 Medium Density Residential Zone for the following reasons:

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

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Attached dwellings are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

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The R3 Medium Density Residential Zone contemplates medium density residential uses on the land.

The housing needs of the community are appropriately provided for in this instance through the proposed construction of alterations and additions to an existing attached dwelling which will provide for an appropriate level of amenity and in a form which will respect the predominant bulk and scale of the surrounding residential development.

The proposed works will respect and complement the existing style of development within the locality and the wider Manly area.

The compatible form and scale of the new development will meet the housing needs of the community within a residential flat building which is a permissible use in this residential zone.

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

The proposal provides for housing diversity within the Manly locality through the provision of the proposed alterations and additions to the existing attached dwelling.

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

This control is not relevant to the subject residential development.

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

The proposal provides for alterations and additions to an existing dwelling which will substantially enhance the appearance of the dwelling.

The proposed new works result in development which complements the locality whilst being suitable for the subject site.

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

This provision does not apply to the subject residential development.

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

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

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7.6 Has the Council considered the matters in clause 4.6(5) of MLEP?

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

7.0 Conclusion

This development proposed a departure from the maximum floor space ratio development standard, with the proposed new alterations and additions to the existing attached dwelling to provide a maximum floor space ratio of 0.96:1.

This written request to vary to the maximum floor space ratio specified in Clause 4.4 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

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

Strict compliance with the maximum floor space ratio control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.6	DA2020/0960 - 47 PACIFIC ROAD, PALM BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/717280
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0960 for demolition works and construction of a dwelling house on land at Lot 341 DP 16362, 47 Pacific Road, Palm Beach, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0960
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 341 DP 16362, 47 Pacific Road PALM BEACH NSW 2108
Proposed Development:	Demolition works and construction of 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:	John Carter William Burston
Applicant:	Kenstrom Design Pty Ltd
Application Lodged:	21/08/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	27/08/2020 to 10/09/2020
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 2.9%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,530,000.00

EXECUTIVE SUMMARY

The application seeks consent for the construction of a dwelling house and in-ground swimming pool.

The proposed dwelling has a height of 8.75m and therefore breaches the permissible height development standard by 2.9%. The site is relatively steep with an approximate fall of 6.0m

Notification of the application resulted in three (3) objections to the proposed development. All of which are pertaining to view loss from both private and public areas.

The application has been referred to the Development Determination Panel (DDP) as the development has an estimated cost of construction over \$1 million and has three (3) unresolved objections



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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the following works:

- Demolition of existing dwelling house,
- Construction of a four (4) bedroom dwelling house,
- Construction of an in-ground swimming pool in the rear yard,
- Associated landscaping works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
 Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - D12.5 Front building line
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line
 Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 341 DP 16362 , 47 Pacific Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Pacific Road.



The site is regular in shape with a splayed frontage of 15.6m along Pacific Road and a depth of 35.0m. The site has a surveyed area of 532.4m².

The site is located within the E4 Environmental Living zone and accommodates a two storey dwelling house with an attached garage.

The site slopes to the north with an approximate fall of 6.0m

The site contains a number of smaller trees and medium sized hedging within the front yard. The rear yard is treated with lawn and includes gardens of medium-high vegetation along the west and northern boundaries.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by 2-3 storey dwelling houses. In addition, views of Palm Beach and Barrenjoey head are north of the subject site.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the erection of height poles.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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</p>



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/08/2020 to 10/09/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Mr David James Southall Mr Emma Elizabeth Doyle	PO Box 343 ST LEONARDS NSW 1590
Mrs Giselle Louise Gerber	43 Wiley Street WAVERLEY NSW 2024
Dr Matthew Robert Wells Mrs Alicia Kristianne Wells	15 Pearce Street DOUBLE BAY NSW 2028
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108

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

- Views**

The matters raised within the submissions are addressed as follows:

- Views:** Concern was raised from Nos.125 and 127 Bynya Road in regards to view loss as a result of the proposal. In addition, a number of the submissions have raised concern that the proposal will affect the views obtained from the public domain



Comment:

This issue has been addressed in detail under Clause 'C1.3 - View Sharing' in this report. The views from each affected property have been described and the impacts assessed.

In summary, this proposal will impact on the views from the concerned two properties (Nos.125 and 127 Bynya Road). It is acknowledged that some of these impacts will be significant in that the views are clearly important and valuable to the residents.

A common suggestion throughout the submissions is for a compromise solution to be reached for the first floor element. As detailed in the view sharing assessment, it is considered that the current proposal is a reasonable compromise solution in itself. This observation is based on the fact that the first floor addition could be larger, could extend further towards the side and rear boundaries in places and could also be higher, especially the south-west elevation (front) of the proposal. All these outcomes could have been part of the proposal and it would still be a fully compliant development (aside from the front building line).

The heights south-west elevation (front) of the first floor addition and the width of the side setbacks are the critical elements for view sharing for Nos.125 and 127 Bynya Road.

The first floor element has been carefully and thoughtfully designed with fully compliant side setbacks to both boundaries, and with the south-west elevation that is well within the height limit. In addition, the room sizes on the first floor are relatively modest, as are the floor to ceiling heights. It is clear that genuine and meaningful attempts have been made by the applicants to minimise the loss of views from neighbouring properties to the south.

Given the above considerations and the full view sharing assessment in this report, the proposed development is considered to be an acceptable outcome that would be reasonably expected for the site. On balance, the proposed development will result in a reasonable sharing of views.

Additionally, the issue of public views has been similarly addressed in detail under Clause 'C1.3 - View Sharing' in this report. In determining the extent of potential view loss from the public domain, the planning principles outlined within the Land and Environment Court Case of Rose Bay Marina Pty Limited Vs Woollahra Municipal Council were applied to the proposal. In summary, it was concluded that the value of the view from Pacific Road is reasonably retained in that views to Barrenjoey Headland and the ocean are still available to the site from the public domain.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The plans indicate that no significant landscape features are affected by the proposed works.</p> <p>Comments from Council's Bushland and Biodiversity section requiring increased percentage of native species in accordance with the DCP are noted.</p> <p>No objections are raised to approval subject to conditions as recommended.</p>



Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed development has been assessed against Pittwater DCP Clause B4.3 (Flora and Fauna Habitat Enhancement Category 2 Land). In accordance with this control, at least 60% of any new landscaping is to include native vegetation. Amendments to the submitted landscape plan are required in order to achieve consistency with this requirement. This will be conditioned.
NECC (Development Engineering)	No objections to approval subject to conditions as recommended.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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. 1070000S dated 06 August 2020).

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

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Commitment	Required Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	50	56

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 who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.75m	2.9%	No

Compliance Assessment

Clause	Compliance with Requirements
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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
7.2 Earthworks	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:	8.75m
Percentage variation to requirement:	2.9%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the 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).

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not



defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"There is a minor non-compliance of 250mm at the end of the (northern) ridge.*
- *The design is in keeping with the local character. Pitched corrugated roof, painted weatherboard cladding and a masonry base are all typical of the traditional architectural design particular to the Palm Beach locality.*
- *The proposed height slightly is lower than the proposed height indicated on the immediate neighbour's current Development Application at 49 Pacific Road.*
- *The additional height in the centre of the house still maintains the water views between the trees for pedestrians on Pacific Road.*
- *We do not believe this minor non-compliance will impact the views or amenity of the neighbours as outlined in the photo montages of the proposed development from the neighbour across Pacific Road."*

Comment:

It is agreed that the extent of the non-compliance is limited to a minor area at the rear of the dwelling, as displayed within the relevant sections and the submitted height model (see figure 1 below). Additionally, it is acknowledged that due to the localised nature of the non-compliance the design does not result in any unreasonable bulk and scale, rather the proposal's design is symptomatic of the traditional architectural styles seen throughout the Palm Beach locality.

The approved dwelling (DA2020/0726) at No. 49 Pacific Road has a maximum height of 9.8m. Notwithstanding, the adjoining site at No. 49 Pacific Road relies upon a variation prescribed by 4.3(2D) of PLEP 2014, which provides that the height of buildings may reach up to 10m in height, subject to consistency with certain criteria. The subject site does not meet the prescribed slope constraints to rely upon the above-mentioned variation, therefore, the proposal is assessed against Council's 8.5m Building height standard.



With regards to view loss, a detailed assessment has been carried out within Clause C1.3 of this report, which has considered the proposals impacts on public and private views. In summary, it was determined that due to the location of the non-compliant roof area there would be no adverse impacts on the maintenance of public and private views, while the proposal as a whole was considered to achieve a reasonable sharing of views.

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).

Figure 1:



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 proposal involves the construction of a part 2-3 storey dwelling house, which will have a maximum height of 8.75m. The desired future character of the Palm Beach locality seeks to remain primarily a low-density residential area with dwelling houses set a maximum of two storeys, which have a well integrated landscaped setting, between the landform and landscape.

Whilst the proposal will technically create a three storey dwelling, the subject site is located on the low-side of the road and will present as a two storey dwelling, when viewed from the Pacific Road. Furthermore, the proposal has been well designed through sensitively responding to the topography of the land by making appropriate level changes.

In addition, the proposal will provide adequate areas for the retention and establishment of sufficient deep soil planting, particularly around the built form. The proposal retains a building height that sits below the existing canopy trees leading to a visual integration of the built form to the landscaped locality. As a result, the proposal provides adequate areas for substantial planting, to visually reduce the built form.

The development satisfies this objective.

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

Comment:

The development is located on the low-side of Pacific Road which is characterised by a fluctuating slope to Bath Road. As such, this creates a range of varying built forms along Pacific Road, with regards to height and scale.

Notwithstanding, the overall height of the development slightly encroaches the 8.5m limit, and is partially representative of a three (3) storey development when viewed from properties to the north-west and south-east and a two (2) storey development when viewed from Pacific Road.

The non-compliance is located at the northern edge of the gable roofline (demonstrated in figure 1 above) due to the topographical nature of the site. The non-compliance is considered to be relatively minor and does not result in unreasonable neighbouring impacts. Overall, the proposed height is considered to be compatible.

The development satisfies this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:



The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces. The proposal satisfies requirements of Clause C1.4 Solar Access of the Pittwater 21 DCP, as the main private open space areas of adjoining properties receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

The development satisfies this objective.

d) to allow for the reasonable sharing of views,

Comment:

With regards to view loss, a detailed assessment has been carried out within Clause C1.3 of this report, which has considered the proposals impacts on public and private views. In summary, it was determined that due to the location of the non-compliant roof area there would be no adverse impacts on the maintenance of public and private views, while the proposal as a whole was considered to achieve a reasonable sharing of views.

The development satisfies this objective.

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

Comment:

The proposal has been well designed through sensitively responding to the topography of the land by making appropriate level changes. In addition, the proposal will be constructed relatively within the existing dwelling's footprint, thereby minimising additional land disturbance.

The development satisfies this objective.

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

Comment:

Notwithstanding the slope's site, the developments design creates additional articulation, and visual interest and the first floor is sufficiently setback from the boundaries such that the visual impact of the building will be appropriately managed.

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

The development satisfies this objective.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

The underlying objectives of the E4 Environmental Living zone

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



aesthetic values.

Comment:

The design of the proposed dwelling is considered a sensitive response to the natural topography of the site, as appropriate level changes are made towards the rear boundary and excavation will be relatively limited to the footprint of the existing dwelling. Additionally, the proposal's design is symptomatic of the traditional architectural styles seen throughout the Palm Beach locality. Amenity to adjoining properties is maintained and the proposal will allow for the reasonable sharing of views.

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

Comment:

The development will not have an adverse effect on any special ecological, scientific or aesthetic values.

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

Comment:

The proposed development does not dominate the natural environment and is maintaining a two-storey character prevalent within the localised streetscape. The proposal does not involve the removal of any native species, nor will it unreasonably disrupt existing topographical features. Overall, it is considered that the proposal successfully achieves a residential development of a low density and scale integrated with the landform and landscape.

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

Comment:

The development will not effect wildlife corridors nor will it have an effect on riparian and foreshore vegetation.

Conclusion:

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

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

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, the concurrence of the Secretary for the variation to the Height of building Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to



10%.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	2.6m (Garage/upper level balcony)	60.0%	No
Rear building line	6.5m	1.5m (Swimming pool) 10.0m (Terrace)	76.9%	No
Side building line	2.5m - East	1.5m (Side access stairs) 2.5m (Dwelling)	40.0%	No
	1.0m - West	1.4m (Dwelling)	N/A	Yes
Building envelope	3.5m - East	Within envelope	N/A	Yes
	3.5m - West	Within envelope	N/A	Yes
Landscaped area	60% (319.4sqm)	45.5%(242.1sqm)	24.2%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	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	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The development is generally consistent with the Desired Character statement of the Palm Beach Locality with exception of the third storey element of the dwelling.

Specifically, the locality statement provides that the *"locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape"*.

However, the third storey element is consistent with the site's topography and the surrounding residential dwelling houses. Surrounding sites are seen to contain third storey elements, including Nos. 34, 50, and 52 Pacific Road. In addition, the proposal presents as two storey development when viewed from Pacific Road, as the dwelling appropriately responds to the topography of the site, while minimising excavation.

In this regard, the built form will sit comfortably with surrounding two, three and four storey residential developments. Further, proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape.

On balance, the proposal is considered consistent with the desired future character of the Palm Beach locality.

C1.3 View Sharing



Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

Comment:

Concern surrounding view loss has been received by two individual properties, all objecting on different aspects of the development application. As such, each property listed below will have an individual view loss assessment:

125 Bynya Road (to the south of the subject site)
127 Bynya Road (to the south-west of the subject site)

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

1. Nature of the views affected

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

Comment to Principle 1:

No. 125 Bynya Road

From the ground floor terrace - Enjoys views of the ocean, an area of breaking waves and Barrenjoey Headland. These views are partly obscured by vegetation.



From the kitchen/living area - Enjoys views of the ocean and the Central Coast (Gerrin Point, Bouddi Point and Third Point). These views are partly obscured by vegetation.





No. 127 Bynya Road

From the first floor terrace - Enjoys views of the ocean, which are partly obscured by vegetation.



From the first floor master bedroom - Enjoys views of the ocean and the Central Coast. These views are partly obscured by vegetation.



From the ground floor patio - Enjoys views of the ocean, which are partly obscured by vegetation.





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

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

Comment to Principle 2:

No. 125 Bynya Road

From the ground floor terrace - The views are obtained from a terrace. The views are obtained from both sitting and standing positions. The views are over the rear boundary of No. 125 Bynya Road, Pacific Road and the southern boundary of the subject site.

From the kitchen/living area - The views are obtained from several rooms (living and kitchen) at the rear of the property. The views are obtained mainly from standing positions with only glimpses being visible from seated positions, especially within the rooms. The views are over the rear boundary of No. 125 Bynya Road, Pacific Road and the southern boundary of No. 45 Pacific Road.

No. 127 Bynya Road

From the first floor terrace - The views are obtained from a terrace. The views are obtained from both sitting and standing positions. The views are over the rear boundary of No. 127 Bynya Road, Pacific Road and the southern boundary of the subject site.

From the first floor master bedroom - The views are obtained from the north facing window attached to the first floor master bedroom. The views are obtained mainly from standing positions, over the rear boundary of No. 127 Bynya Road, Pacific Road, the southern boundary of the subject site and the southern boundaries of Nos. 45 and 41 Pacific Road.

From the ground floor patio - The views are obtained from a patio. The views are obtained mainly from standing positions, over the rear boundary of No. 127 Bynya Road, Pacific Road, and the southern boundary of the subject site.

3. Extent of impact

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

Comment to Principle 3:

No. 125 Bynya Road

A relatively small portion of the total views enjoyed by No. 125 Bynya Road will be affected.



However, at certain angles from the ground floor terrace, the affected views include an area of breaking waves and the ocean. Minimal views will be lost from the the kitchen/living area. In this regard, the view loss is considered to be minor/moderate.

No. 127 Bynya Road

A relatively small portion of the total views enjoyed by No. 127 Bynya Road will be affected. The view loss from the first floor includes a relatively small portion of ocean views. Additionally, from the ground floor patio, the affected views include a relatively small area of ocean views. In this regard, the view loss is considered to be minor/moderate.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

No. 125 Bynya Road

The critical control relating to view loss for this property is height. From the ground floor, it is the height of the south-west elevation.

The south-west elevation is well below the 8.5m height limit and this maximises the views from the ground floor of No. 125 Bynya Road (as seen in the view loss diagram below). Furthermore, the proposal is contained within the building envelope control on both side boundaries, which maintains reasonable view corridors.

It is not considered that there is a more skilful design that would achieve the same development potential and retain more views for No. 125 Bynya Road. In this regard, the proposal is a reasonable outcome for the site and will allow a reasonable sharing of views.



No. 127 Bynya Road

The critical controls relating to view loss for this property are the height of south-west elevation, the western side setback and building envelope.

The south-west elevation is compliant with the 8.5m height limit when measured from natural ground level. The western elevation of the first floor addition is set back between 1.4m and 4.4m from the boundary, which sufficiently steps away from the boundary as the wall height increases.

These factors minimise the view loss from No. 127 Bynya Road and it is considered that there is not a more skilful design that would achieve the same development potential while retaining more views. In this regard, the proposal is a reasonable outcome for the site and will allow a reasonable sharing of views.

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

Comment:

In determining the extent of potential view loss from the public domain, the planning principles outlined within the Land and Environment Court Case of Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046 are applied to the proposal.

Nature and Scope of Views

The first step is to identify the nature and scope of the existing views from the public domain, including, but not limited to:



- Any existing obstructions of the view;
- Composition of the view (e.g. is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);
- Are existing obstructions permanent or temporary;
- The curtilages of important elements within the view.

Comment to Principle 1:

The affected view contains Barrenjoey headland, Barrenjoey lighthouse, the ocean and an area of breaking waves, with a corridor between Nos. 47 and 45 Pacific Road. Existing obstructions to the view include dwellings and vegetation on private property and the road reserve. The built obstructions are permanent in nature, while the vegetation obstructions are subject to change. See photographs below:

Image 1:



Image 2:



Image 3:



Locations of View Interruptions

The second step is to identify the locations in the public domain from which the potentially



interrupted view is enjoyed.

Comment to Principle 2:

The affected view is available from the northern side of Pacific Road that runs adjacent with the front boundaries of Nos. 47 and 45 Pacific Road.

Extent of Obstructions

The third step is to identify the extent of the obstruction at each relevant location. The impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment from many positions by all people.

Comment to Principle 3:

At certain positions along the northern side of Pacific Road, the proposed development will obstruct views to Barrenjoey headland, Barrenjoey lighthouse, the ocean and an area of breaking waves, as seen within Image 2. However, as seen within the above photos these views will be maintained at certain positions along Pacific Road.

Intensity of the use of the Relevant Public Spaces

The fourth step is to identify the intensity of public use of those locations where enjoyment of the view will be obscured, in whole or in part, by the proposed development.

Comment to Principle 4:

Pacific Road is a narrow secondary road, used to gain access to the residential properties along the road. Additionally, Pacific Road does not contain a footpath nor is one planned for construction.

Documentation of the View

The final step to be identified is whether there is any document that identifies the importance of the view to be assessed, such as international, national, state or local heritage recognition, or where the relevant planning controls promote or specifically requires the retention or protection of public domain views.

Comment to Principle 5:

Pacific Road is identified as part of Council's Scenic Streets Register, which states (of the whole road): "Arguably Palm Beach's most iconic street, it is some 2.5 km long running south-east to northwest. Each end is a little sparse of vegetation but makes up for that deficiency with glorious water views over Whale Beach, Palm Beach, northern Pittwater, Lion Island, Barrenjoey Headland, Ocean Beach and Ettalong, McMasters Beach and Killcare.

That part of the Bay to Breaker's Walking Track that runs from the shopping centre on the Pittwater side to Pacific Road is justifiably signposted "Stairway to Heaven". At the top of the hill at the western end is an entrance to McKay Reserve. For the next 400 metres the road is lined by splendid Angophora, Mahogany, Spotted Gum and Scribbly Gum. Flocks of Rainbow Lorikeets, Sulphur Crested Cockatoos, King Parrots, Corellas, Noisy Minors and Crested Pigeons are found here together with the occasional Brush Turkey. One gets repeated glimpses of glorious ocean, beach and headland views to the north, framed by native vegetation. Such views are repeated, yet each surprisingly different, all along the road."

Overall Comment:



The view from street is currently intermittent in that as the viewer moves across No. 45 Pacific Road and the subject site, it is lost from sight due to vegetation and existing structures.

The view loss from the public domain is caused at certain positions by the proposed first floor element. The proposed first floor element has been sufficiently sited and modulated to reduce any unreasonable impact to neighbouring properties and the public domain. The first floor element is not compliant with the maximum building height and front building line, but is otherwise compliant with the built form controls within the P21 DCP and Pittwater LEP 2014.

The proposed height breach occurs on the north-east elevation (rear), with a minor portion of the roof element protruding above the 8.5m height limit. This non-compliance has been discussed with further detail with Clause 4.6 of this report, however, in summary it was found to be reasonable, as it will not create any unreasonable neighbouring impacts, including view loss. The front setback is acceptable on merit in relation to building bulk and scale.

In relation to view loss, the portion of the first floor element that results in the greatest view loss (the south-west elevation) is compliant with the front building line control and sits below the height limit. The inclusion of the first floor is not unreasonable, and the proposed location of the garage is the most logical and practical, considering the site topography and constraints. To shift the first floor further to the west in an attempt to reduce view loss would likely not result in a significant result, and would require an unreasonable redesign. It is therefore considered a reasonable development. The value of the view from the Pacific Road is reasonably retained in that views to Barrenjoey Headland and the ocean are still available to the site from the public domain.

- *Canopy trees take priority over views.*

Comment:

The proposed development does not unreasonably impact upon trees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D12.5 Front building line

Description of Non-Compliance

The minimum front building line is 6.5m for the site. The proposal involves constructing an upper level, which will be partly constructed above the existing garage, therefore maintaining the existing front setback of 2.6m.

It is important to note that the existing garage, which is to remain, is located on the front boundary setback, however dense vegetation on the road reserve screens the existing structure.

Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below:

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



Comment:

The subject site is relatively constrained by the slope of the site. This is a common constraint for the nearby properties and has resulted in a prevalence of built form on the street front boundary. The proposal will remain consistent with the nearby development and will maintain the streetscape character of the locality.

The natural environment in proximity to the site is dominated by trees and remnant vegetation with houses built on elevated structures and garages close to the road due to the steep terrain.

The proposal also enhances existing landscaping within the site, and along the front boundary to soften the built form. This is adequate to ensure the landscape character is maintained and the built form does not impose on the public spaces. The proposal is of a suitable design when considering the site constraints and the nearby development.

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

Comment:

The minor areas of non-compliance do not result in any unreasonable impacts upon views currently enjoyed from adjoining/nearby properties. In addition, if the upper level were to fully comply with the requirements of this control it would result in additional view loss impacts, particularly from the public domain. Further, a detailed view loss assessment has been conducted under Clause C1.3, above in this report, which has determined that the proposal will allow a reasonable sharing of views.

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

Comment:

The site does not adjoin a main road.

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

Comment:

The submitted landscape plan involves enhancing the site's natural features, through providing adequate landscaped areas and incorporating substantial planting across the site. Additionally, dense vegetation on the road reserve will remain to screen the proposal. Overall, it is considered that the proposed landscape design will be predominant feature of the site, thereby reducing the visual impact of the built form, when viewed from the street.

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

Comment:

Due to the significant slope of the site achieving this is not considered to be reasonable. The development is not located on a main road and will not directly result in traffic hazards. Pacific Road is a local residential road and the garage entry is consistent to the exiting arrangement and with other garage entry structures along the street.

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



Comment:

The bushland character of the locality is maintained by concentrating landscape elements in the front and rear setbacks, including canopy trees and natural ground surfaces for the native landscaping understorey.

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

Comment:

The established building line along the northern side of Pacific Road is relatively varied due to the subdivision pattern, access, and topography of the area. As such, built form is commonly seen within the front setback. The design is keeping with the height of the natural environment as it sits below the height of surrounding canopy trees.

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

Comment:

To encourage attractive street frontages and pedestrian amenity is satisfactory for the site by reinstating landscaping works in the front setback to soften the visible wall and roof elements within the front setback area.

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

Comment:

The works respond to the spatial characteristics of the existing urban environment which is a steep site. Therefore, the proposal's location is consistent with considerations to develop the site in an appropriate manner for the zone and meet the urban living needs of the occupants.

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

D12.6 Side and rear building line

Description of non-compliance

The proposed new access stairs that run parallel to the eastern side boundary are sited 1.5m from such boundary. Due to the situation of the proposed dwelling P21DCP requires a minimum eastern side setback of 2.5m.

Additionally, the proposed swimming pool is set back 1.3m from the eastern side boundary and 1.5m from the rear boundary.

Merit consideration



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

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

Comment:

The access stairs are to replace those that are existing, and in turn will retain the visual characteristics of the site as viewed from adjoining sites. The stairs and swimming pool will be located at ground level and will be surrounded with landscaped treatment, therefore, they will not create an overbearing visual dominance. The desired future character of the area is considered to be achieved.

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

Comment:

The proposed works are to be located at ground level and will be surrounded with existing and additional landscape treatment, therefore the bulk and scale is considered to be minimal such they will not appear as a dominant site feature as viewed from adjoining properties.

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

Comment:

This matter has been addressed elsewhere within the report (refer to Clause C1.3 View Sharing under P21DCP). In summary, the proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

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

Comment:

As noted above, no views are to be unreasonably compromise by the proposed works.

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

Comment:

Imposed conditions, will require the swimming pool to have a 2.0m eastern side setback, so that there is sufficient area for screen planting. Therefore, as the works are located at ground level and will be surrounded by adequate landscaping treatment it is considered that a reasonable level of privacy, amenity and solar access will be maintained between the subject site and surrounding properties.

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



Comment:

Despite the loss of landscaped open space, the proposed development does not involve the removal of any significant vegetation and will allow for substantive landscaping across the site. Council's Landscape Officer has reviewed the proposal and raised no objection subject to conditions.

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

Comment:

The development has been sited appropriately in accordance with the site constraints and the surrounding residential context, ensuring reasonable amenity can be maintained for the dwelling occupants and those of adjoining and surrounding properties. Access to the site will remain relatively unaltered from existing.

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

Comment:

As above, the proposed development does not require the removal of any significant vegetation or tree canopy. In turn, the built form will remain significantly screened from the existing provision of vegetation. Conditions of consent have been imposed requiring the protection of significant species currently on-site which will assist in the retention of landscape treatment.

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

Comment:

Not applicable, given the site does not adjoin a commercially zoned property.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D12.10 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The control requires a minimum of 60% (319.4sqm) of the site area to be landscaped.

The application proposes a total landscaped area of 45.5%(242.1sqm), representing a variation of 24.2%.

Provided the outcomes of this control are achieved, impervious areas less than 1 metre in width and impervious landscape treatments providing these areas are for outdoor recreational purposes only up to



6% of site area can be included in the landscaped area calculation. The inclusion of this variation to the landscaped area increases the calculation to 317.3sqm, 59.6% of site area.

Merit assessment

The outcomes of the control have each been addressed as follows:

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

Comment:

As discussed else where within this report, the proposal reasonably achieves the desired future character of the Palm Beach locality.

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

Comment:

The dwelling is compliant with side boundary envelope controls, while the upper level is only over a portion of the footprint. However, a height breach occurs on the north-east elevation (rear), with a minor portion of the roof element protruding above the 8.5m height limit. This non-compliance has been discussed with further detail with Clause 4.6 of this report, in summary it was found to be reasonable and will not result in any adverse impacts to neighbouring properties. Overall, the dwelling's design has been effectively modulated to minimise the bulk and scale of the built form.

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

Comment:

The development will not result in unreasonable overshadowing onto the neighbouring properties due to the orientation of the site.

The design has positioned windows and balconies to minimise privacy impacts. In addition, the level of compliance with the height and side boundary envelope controls will minimise the impact on views.

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

Comment:

The proposal will provide adequate areas for the retention and establishment of sufficient deep soil planting, particularly around the built form. The proposal retains a building height that sits below the existing canopy trees leading to a visual integration of the built form to the landscaped locality. As a result, the proposal provides adequate areas for substantial planting, to visually reduce the built form.

- *Conservation of natural vegetation and biodiversity.*

Comment:

The proposed dwelling is located almost entirely over the existing footprint, with minimal excavation. It is a sensitive solution for the constrained site that preserves the natural features



and biodiversity. Native trees and vegetation are retained as part of the proposal. In addition, the development is supported by Council's Natural Environment Biodiversity and Landscaping Team.

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

Comment:

The site will retain sufficient deep soil areas to assist with stormwater runoff.

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

Comment:

Some vegetation is being retained and the landscape plan shows a suitable mix of planting that will preserve and enhance the rural and bushland character of the area.

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

Comment:

The site will retain sufficient soft surface areas to assist with stormwater infiltration and management.

Based on the above, the proposed landscape area in this instance is supported on merit and considered to satisfy the outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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 \$15,300 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,530,000.

CONCLUSION



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

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

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

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

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

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.

The subject site currently contains a two storey dwelling. The proposal seeks consent for the construction of a new dwelling and swimming pool.

The development includes several non-compliances, including a breach of the height of buildings standard.

The proposal attracted three submissions to the formal notification.

This assessment has concluded that the non-compliances are reasonable and the Clause 4.6 variation to the height of buildings development standard can be supported based on the applicants written request.



Overall, the proposal will be an upgrade to the existing dwelling, while satisfying the objectives of the zone and being consistent with character of the locality.

Accordingly, the application is recommended for approval subject to conditions.
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 DA2020/0960 for Demolition works and construction of a dwelling house on land at Lot 341 DP 16362, 47 Pacific 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
DA01 - Rev E	27 October 2020	Kenstrom Design P/L
DA02 - Rev B	05 August 2020	Kenstrom Design P/L
Proposed colour chart	11 August 2020	Kenstrom Design P/L

Engineering Plans		
Drawing No.	Dated	Prepared By
C02.01 - Rev B: Stormwater drainage plan	02 July 2020	Engineering Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical report	13 August 2020	JK Geotechnics

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



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

Landscape Plans		
Drawing No.	Dated	Prepared By
Planting plan	July 2020	Michele Shennen

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. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	10 September 2020

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:



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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
 - (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
 - (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork



NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$15,300.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,530,000.00.

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

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council



that the total monetary contribution has been paid.

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and 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.

7. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JK Geotechnics Pty Ltd dated 13/08/2020 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.

8. **Amendments to the approved plans**

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

- The proposed swimming pool is to have a minimum eastern side setback of 2.0m.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the



issue of the construction certificate.

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

9. **Boundary Identification Survey**

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

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

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

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

10. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management Policy for Development, and generally in accordance with the concept drainage plans prepared by Engineering Studio Pty Ltd, job number 19011, drawing number C00.01, C02.01 to C02.03, dated 02/07/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. The DCP shall be located away from the dwelling on the outside of the OSD basin closer to the dispersion trench.
- ii. The dispersion trench shall be located parallel to the contours.
- iii. Minimum freeboard of 500mm shall be provided between the TWL within the OSD basin and habitable floor levels.
- iv. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

11. **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.

12. **Amend Landscape Plan**

The submitted Landscape Plan is to be amended to include a minimum 60% locally native species as a proportion of the total number of plants. Locally native species are to be consistent with species of the Pittwater Ward listed in the Native Plants Guide on Council's website. The amended Landscape Plan is to be prepared by a suitably qualified landscape architect and provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

13. **Compliance with Standards**

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

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

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

14. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Tree and vegetation protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees and vegetation within the site not indicated for removal on the approved plans, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation not approved for removal.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with the approved Tree Protection Plan and Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without



consultation with an Arborist with minimum AQF Level 5 in arboriculture,

iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,

vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) The Certifying Authority must ensure that :the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

Reason: tree and vegetation protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Road Reserve**

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

Reason: Public safety.



17. **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.

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

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

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

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

a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

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

20. **Stormwater Disposal**

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

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

21. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The



application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention and dispersion system works.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention and dispersion system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention and dispersion system is to be submitted.

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

Reason: To ensure the on-site stormwater detention and dispersion system are maintained to an appropriate operational standard and not altered.

22. **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.

23. **Practical Completion of Landscape Works**

A landscape practical completion report is to be prepared by the consultant landscape architect/designer and submitted to the Principal Certifying Authority with the Occupation Certificate application. This report is to certify that all landscape works have been completed in accordance with the landscape plans and these conditions of consent.

Reason: To ensure landscaping is adequate and consistent with approved plans.

24. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.



(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life (DACPLF09)

25. **Acoustic Treatment of Pool Filter**

The pool filter is to be enclosed within a housing and acoustically treated so that it does not emit any noise louder than 5dB(A) above background noise at the nearest residential receiver.

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

Reason: To ensure the acoustic amenity of the neighbouring residents.

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

26. **No Planting Environmental Weeds**

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

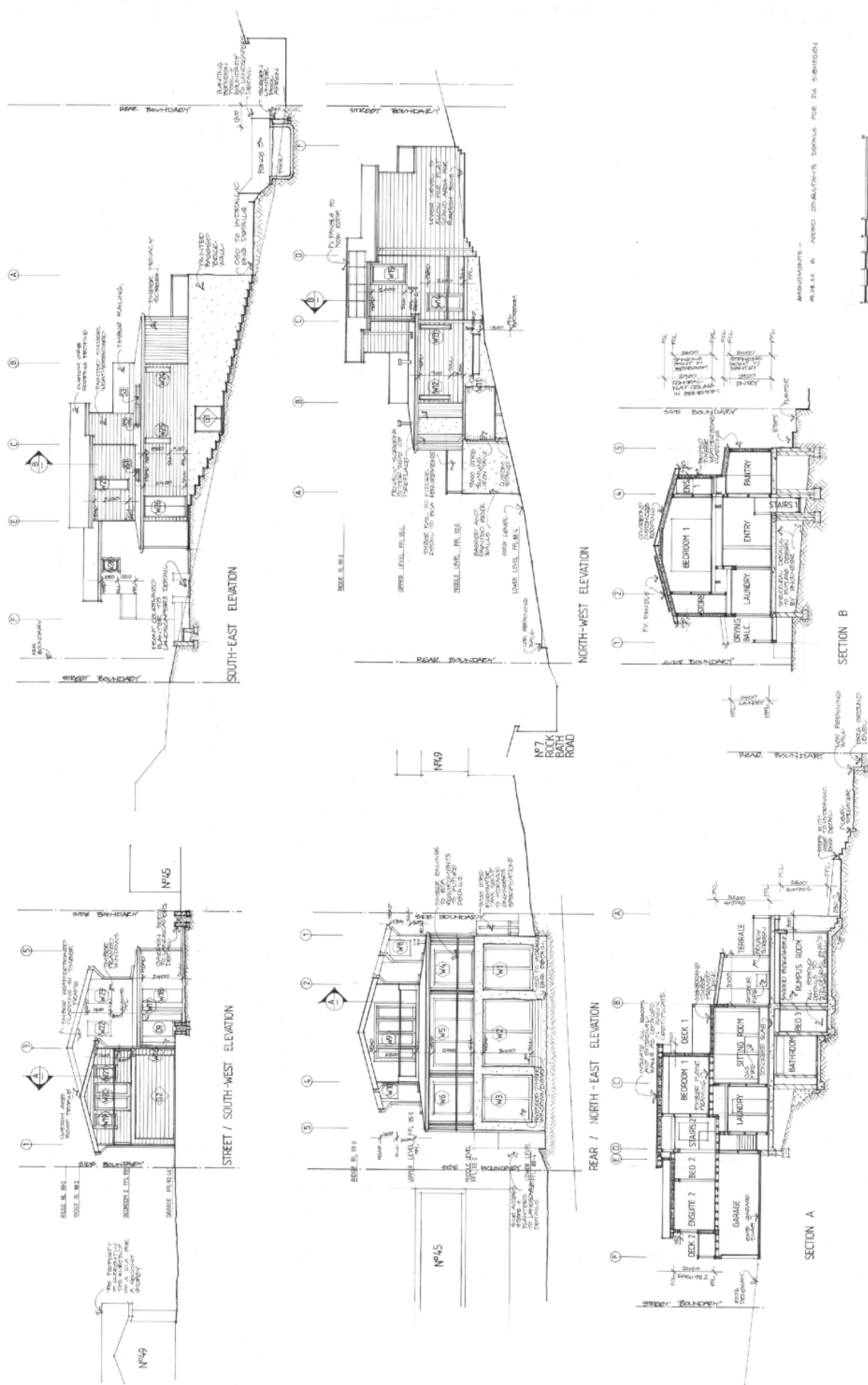
Reason: Weed management.

27. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.





**CLAUSE 4.6 VARIATION REPORT
IN RELATION TO THE MAXIMUM BUILDING
HEIGHT STANDARD IN CLAUSE 4.3 OF THE
NORTHERN BEACHES COUNCIL PITTWATER
LOCAL ENVIRONMENTAL PLAN 2014**

47 Pacific Road, Palm Beach

Prepared for
Jack Burston

By
Kenstrom Design Pty Ltd

July 2020

KENSTRÖM DESIGN PTY LTD

92 Cathedral Street, Woolloomooloo NSW 2011
P: 02 9357 4011 M: 0408 290 432
Nominated Architect Georgina Strömland (5095)

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1. Introduction

The Applicant seeks approval for the construction of a new single dwelling at 47 Pacific Road, Palm Beach. This replaces an existing single dwelling.

It is proposed that the house is designed in a traditional Palm Beach house with pitched roofs over painted weatherboard walls sitting on a masonry base.

This Clause 4.6 variation request has been prepared in relation to the building height development standard in Clause 4.3 of Pittwater LEP 2014 (i.e. height limit of 8.5m). It is required because the site slopes and the eaves over the top bedroom windows penetrate the height plane by 250mm over a very short distance.

The site is in the E4 Environmental Living zone, the objectives of which are as follows:-

- a) To provide for low-impact residential development in areas with social ecological, scientific 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.*

2. Relevant Development Standard

Pursuant to Pittwater LEP 2014, the maximum building height limit applying to this site is 8.5 metres.

The LEP definition of Building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

4.3 Height of buildings

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.*

The proposed dwelling is 8.75m above the existing ground level in the centre of the house.

- (2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the [Height of Buildings Map](#) may exceed a height of 8.5 metres, but not be more than 10.0 metres if—*
- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the [Height of Buildings Map](#) is minor, and*
 - (b) the objectives of this clause are achieved, and*
 - (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
 - (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

3. Exceptions to Development Standards (Clause 4.6)

4.6 Exceptions to development standards

The objectives of this clause are as follows—

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

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

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

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

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

(a) the consent authority is satisfied that—

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

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

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

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

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

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

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Accordingly, Clause 4.6 can be used to vary (to the extent required) the building height development standard which applies to the site.

4. Assessing the proposal

The following diagrams show the relevant sections through the house (shaded blue) at three gridlines. Refer Diagram 1 below to reference where the sections are taken.

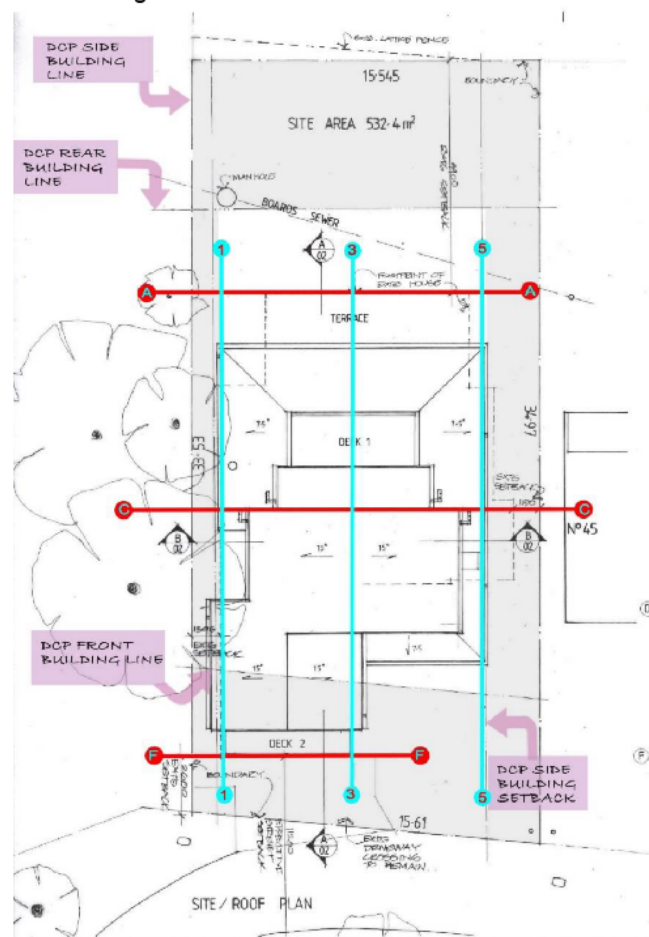


Diagram 1 plan of where sections are taken

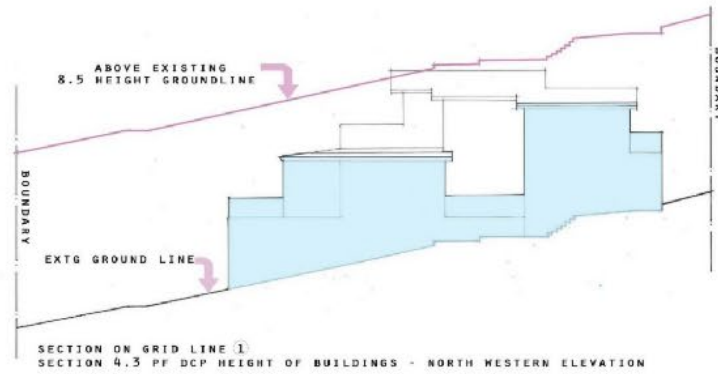


Diagram 2 Site section on northwest boundary

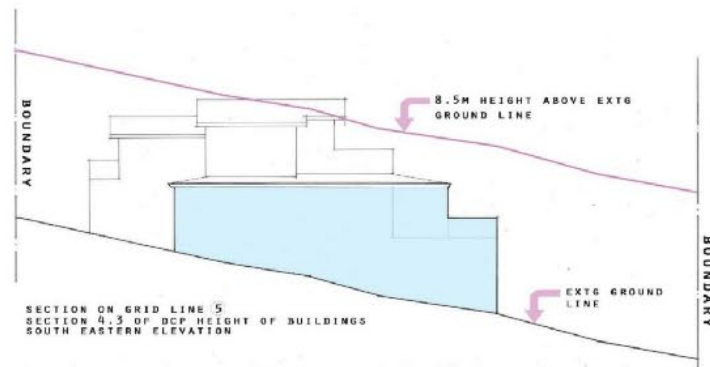


Diagram 3 Site section on southeast boundary

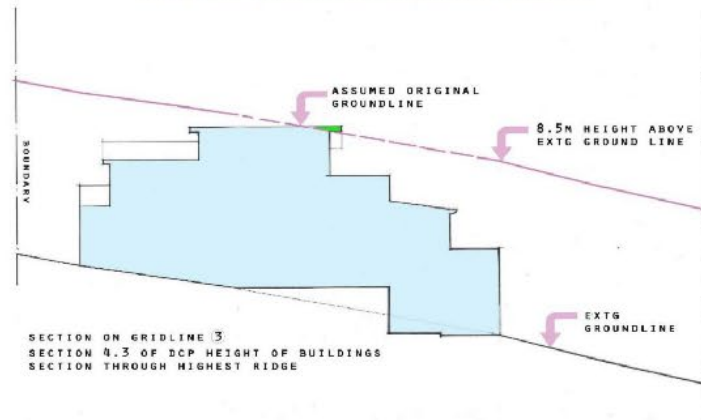


Diagram 4 Site section through highest area

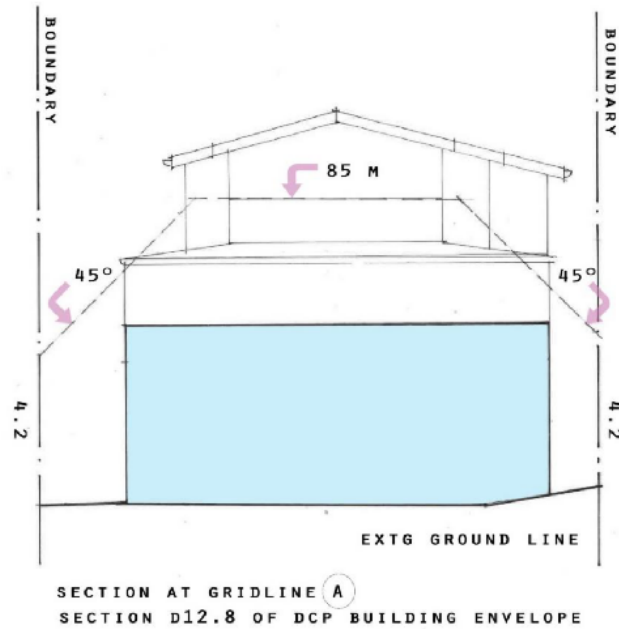


Diagram 5 Building Envelope to the north

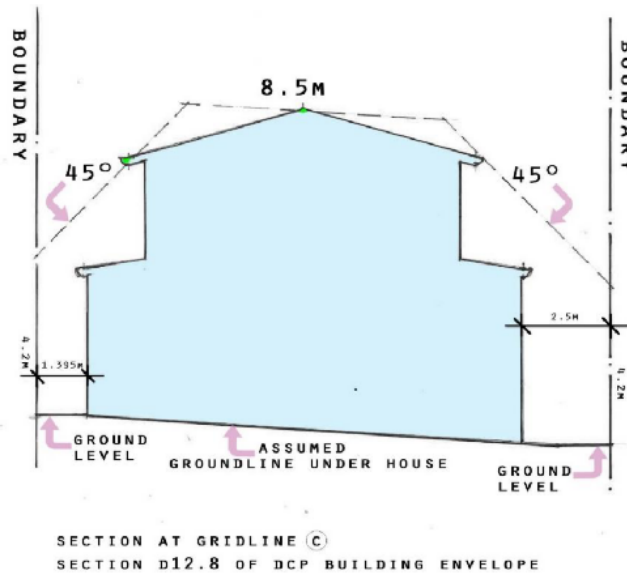


Diagram 6 Building Envelope in the middle of the house

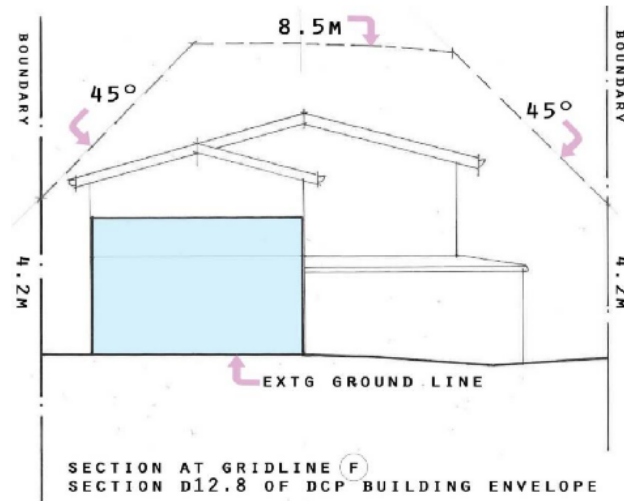


Diagram 7 Building Envelope to the south / street frontage

There is a minor non-compliance of 250mm at the end of the ridge shown in Diagrams 4 and 6.

The design is in keeping with the local character. Pitched corrugated roof, painted weatherboard cladding and a masonry base are all typical of the traditional architectural design particular to the Palm Beach locality.

The proposed height slightly is lower than the proposed height indicated on the immediate neighbour's current Development Application at 49 Pacific Road.



Picture 1 View from Pacific Road – left is before and right is the proposed house.

The additional height in the centre of the house still maintains the water views between the trees for pedestrians on Pacific Road.



EXISTING



PROPOSED



EXISTING



PROPOSED



EXISTING



PROPOSED

Picture 2 View from 125 Bynya Road balcony in three locations.

We do not believe this minor non-compliance will impact the views or amenity of the neighbours as outlined in the photo montages of the proposed development from the neighbour across Pacific Road.



Diagram 8 3D showing the Building Envelope – viewed from the east

In the image above it shows the minor non-compliance, highlighted in green, where the roof punches above the Building Envelope as setout in the Pittwater DCP2014.

5. Compliance

5.1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case and are there sufficient planning grounds to justify contravening the standard?

5.1.1 What is the purpose/object of the standards?

The Pittwater LEP2014 objectives of Clause 4.3 are outlined below. The proposal achieves the intent of the standard as noted below in relation to that objective.

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

Due to the sloping site – the house is lower than the Road and therefore is viewed as a lower two storey house. The style is consistent with the Palm Beach traditional housing – painted weatherboard sitting on a masonry base with a pitched roof. The non-compliance has no impact on the scale.

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

The adjoining neighbour on the north west at 49 Pacific Road has applied for a major renovation resulting in a higher roof ridge. As it steps back the bulk is behind the other neighbour at 45 as can be seen in Diagram 8. This demonstrates that the non-compliance does not affect the objective.

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

As the second storey steps back away from the southern boundary, this minimises the overshadowing. Also the setback on that side is 2.5m to minimise the overshadowing. The non-compliance has no impact on the overshadowing.

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

As shown in Pictures 1 and 2, the photomontages indicate that there is no view loss due to this minor non-compliance

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

The proposal steps down the slope to reflect natural topography. The proposed slight non-compliance does not impact on that objective.

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

As shown above, the proposal and the non-compliance, does not impact on this objective.

5.1.2 Consistency with the objectives of the standard

This is outlined in response to the objectives in 5.1.1 above.

5.1.3 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Yes, for the reasons setout above.

There is an absence of impacts associated with the non-compliance and the objectives of the standard can be achieved notwithstanding the non-compliance.

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

Yes.

This is explored in Section 4 and in 5.1.1 above.

5.2 Has this written request adequately addressed the matters required to be demonstrated by sub-clause 4.6(3)?

Yes.

5.3 Is the development in the public interest because it is consistent with the objectives of the height standard and the objectives for development within the zone in which the development is proposed to be carried out?

Yes. The proposed development is consistent with the zone objectives as outlined in Section 1 above. The proposal is to build over the existing house footprint, thereby minimising the impact.

Yes. In relation to the height standard – refer to 5.1.1 above.

6. Conclusion

As demonstrated above, the proposal satisfies the intent of the control and should be assessed on its merit. The minor non-compliance has no impact on any of the objectives.

Assessing this minor non-compliance in relation to the Pittwater LEP2014 objectives of Clause 4.3, within the E4 Environmental Zone, the proposal achieves the intent of the standard.