

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 16 DECEMBER 2020



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 16 December 2020

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 9 DECEMBER 2020

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 9 December 2020 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2020/1094 - 72 BEATRICE STREET, BALGOWLAH HEIGHTS - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SECONDARY DWELLING AND SWIMMING POOL
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2020/769571
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 grant **deferred commencement approval** to DA2020/1094 for demolition works and construction of a dwelling house including a secondary dwelling and swimming pool on land at Lot A DP 432384, 72 Beatrice Street, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1094
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot A DP 432384, 72 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house including a secondary dwelling and 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:	Evan Gareth Jones Stephanie Louise Fengels Jones
Applicant:	Sheralee Patricia Hogan

Application Lodged:	07/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	14/09/2020 to 28/09/2020
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 1,160,000.00
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EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2020/1094 from Sheralee Hogan for demolition works and the construction of a new dwelling, secondary dwelling and swimming pool at 72 Beatrice Street, Balgowlah Heights.

The site is zoned R2 Low Density Residential under the provisions of Manly Local Environmental Plan 2013 ('MLEP 2013') and the proposal is permissible with consent. State Environmental Planning Policy (Affordable Rental Housing) ('SEPP ARH') and Manly Development Control Plan 2013 ('MDCP 2013') are also relevant to the proposal.

Six (6) submissions have been received in objection to the proposed development. The consent authority can be satisfied that the issues raised in these submissions have been addressed, and that none of the issues raised warrant the refusal of the proposed development.

The consent authority can also be satisfied that the proposal is consistent with the objectives of MLEP 2013, SEPP ARH and MDCP 2013, and that any environmental impacts can be reasonably mitigated/minimised with conditions of consent.

As the cost of works exceeds \$1million and as more than three (3) submissions in objection were received, the application is referred to the Development Determination Panel for determination. The application is recommended for approval, subject to the draft conditions of consent attached.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the construction of a new dwelling and detached secondary dwelling at the subject site. Specifically, the application includes:

- demolition of the existing dwelling,
- tree removal,
- site preparation,
- construction of a two storey dwelling, including an attached double garage,
- construction of a two storey secondary dwelling,
- construction of a swimming pool and pool cabana,
- infrastructure works, and
- landscaping.

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

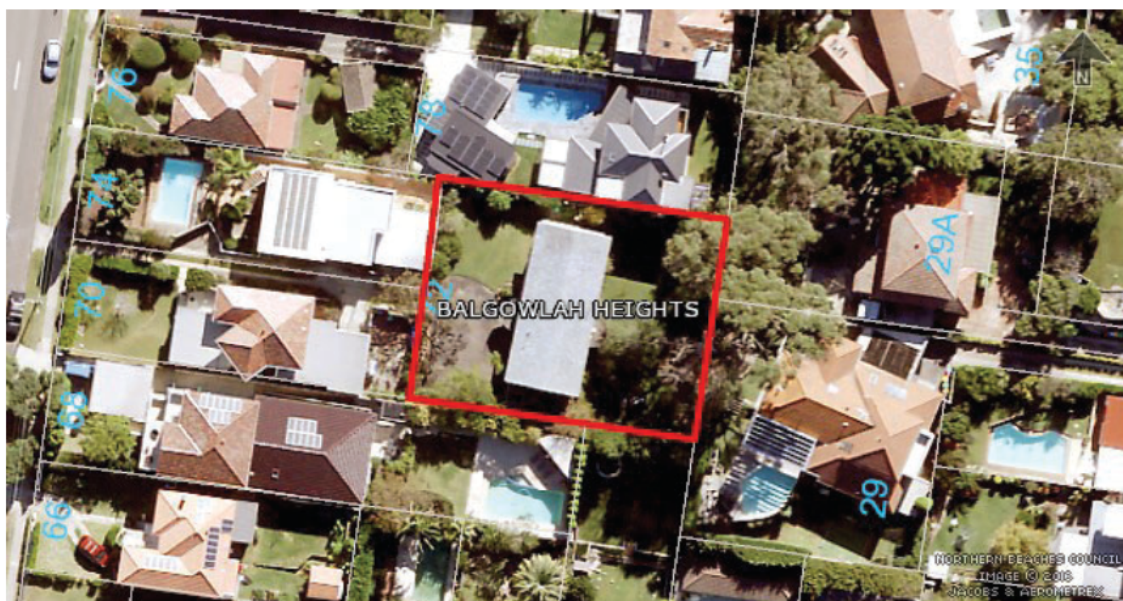
Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot A DP 432384 , 72 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The site is rectangular in shape, with a maximum width (north-south) of 26.82m, a maximum depth (east-west) of 34.805m and a total area of 931.4m². The site is landlocked, with access to Beatrice Street gained over a driveway and associated right of carriageway burdening both 70 and 74 Beatrice Street, Balgowlah. An existing two storey dwelling is located centrally on the site, surrounded by landscaped area and canopy trees.</p> <p>The site is dissected by a historical sewerage tunnel, which is nominated as an item of heritage significance by Sydney Water. The site is also burdened by a drainage easement along the full length of the eastern boundary, which extends to the adjoining property to the south (30 Ernest Street, Balgowlah), over which the site benefits from an easement for drainage. The site currently obtains electricity by means of an overhead connection from Beatrice Street, over 74 Beatrice Street, Balgowlah. However, no easement is registered on the land in this regard.</p> <p>The site is located in a low density residential area, comprised of dwellings of varying age, scale and character. The subdivision pattern is also irregular, with varied lot sizes, shapes and access arrangements.</p>

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (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)	<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.

Section 4.15 Matters for Consideration'	Comments
	<p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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 14/09/2020 to 28/09/2020 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 5 submission/s from:

Name:	Address:
Doyle Consulting Group Austrapac Consultants Pty Ltd	3A Kendall Road CASTLE COVE NSW 2069
Luke John Elliott Denise Chantal Elliott BBF Town Planners	68 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mr Ohannes John Kayik Metro Planning Services	70 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mr Michael John Sutherland Ms Anna Marea Immacolate Campbell	78 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mr Stephen Michael Pascall Dr Katherine Nieves Pascall	30 Ernest Street BALGOWLAH HEIGHTS NSW 2093

The concerns raised in the submissions received are considered, as follows:

- **Siting of proposed built form**

Comment: A number of submissions have raised concern with the siting of the proposed built form, alleging non-compliance with the 6m front and 8m rear setback requirements of MDCP 2013. As discussed with regard to clause 4.1.4 of MDCP 2013, the landlocked site does not conform to this standard approach, and the setbacks have been considered on merit and are deemed to be acceptable.

Some of the submissions also suggest that the siting of the proposal is inconsistent with the established building line of dwellings located at the rear of properties fronting Beatrice Street. However, this perceived preference for dwellings to be located closer to the east on the block is at odds with other submissions which identify that the development should be setback further from the eastern boundary. Noting the lack of any established pattern of built form or any consistency in the subdivision layout, consistency with other dwellings is not considered to be relevant to the proposal.

Following a detailed assessment of the potential impacts of the proposal upon all adjoining neighbours, it is considered that the siting of the proposed built form achieves an appropriate balance with equal regard for the amenity of future owners and all adjoining landowners.

- **Length of southern elevation**

Comment: Submissions have been received in objection to the length of the southern elevation. The southern elevation is well articulated, with varied setbacks at both the ground and upper level, with modulation of the roof forms. The setbacks also facilitate additional landscaping along the southern boundary, which in conjunction with landscaping in existence on properties to the south, will ensure that the built form is softened by landscaping.

- **Privacy**

Comment: A submission has been received on behalf of the adjoining property owner of 70

Beatrice Street with regard to overlooking associated with windows on the western elevation of the upper floor of the proposed dwelling. The windows in question (W12 and W13) are limited in size, have sill heights of 1.5m and are associated with a bedroom.

A submission was received raising concerns regarding overlooking of 78 Beatrice Street from the window on the northern elevation of the loft. The elevated window in question (W27) is associated with a bedroom and is off-set from windows on the adjoining single storey secondary dwelling. Hedge planting is along proposed along the northern boundary of the site to prevent any overlooking that may arise.

A submission was received raising concern with regard to overlooking of the private open space at the rear of 30 Ernest Street from a window on the southern elevation of the upper floor of the proposed dwelling. The window in question (W25) is located behind the door to the Master Bedroom, and will be screened by existing mature landscaping at the rear of 30 Ernest Street and proposed landscaping on the subject site.

A submission was received from the owners of 29 Lewis Street raising concern with regard to overlooking of their private open space from the upper floor balcony. A condition of consent is recommended to require a screen along the eastern edge of the proposed balcony.

Subject to conditions of consent, the proposed development will not result in any unacceptable impacts with regard to visual privacy.

- **Solar access**

Comment: A number of properties have raised concern regarding additional overshadowing resulting from the proposed development. The additional overshadowing is acknowledged, however as discussed in detail with regard to clause 3.4.1 of MDCP 2013, the additional overshadowing is not unreasonable.

- **Views**

Comment: A submission was received on behalf of the adjoining property owners of 68 Beatrice Street, raising concern with regard to view loss. Whilst the impact upon the existing view corridor is acknowledged, the loss of this view is not considered to be unreasonable in the circumstances of this application. See further discussion with regard to clause 3.4.3 of MDCP 2013.

- **Construction impacts**

Comment: A number of submissions received raise concern with regard to impacts associated with construction, including potential impacts to the right of carriageway and structures adjacent to the right of carriageway. The property owners benefit from a right of carriageway which can be used for construction purposes. However, to alleviate concerns regarding potential damage associated with construction, conditions of consent are recommended to require the production of pre and post construction dilapidation reports and for the production and enforcement of a Construction Traffic Management Plan.

- **Stormwater works in the Right of Carriageway**

Comment: Objections were received with regards to stormwater works proposed on adjoining land to the west of the site and the absence of any associated easement for drainage. In response to these concerns, the applicant has amended the proposed stormwater design to be

directed along the stormwater easement to the south-east of the site.

- **Height**

Comment: An objection has been received from the property owner of 30 Earnest Street in objection to the height of the proposed development, particularly the two storey element in the south-east corner of the site. The proposed development is wholly maintained below the maximum height limit prescribed by MLEP 2013, and the southern elevation is also consistent with the maximum wall height and setbacks prescribed by MDCP 2013. The visual impact of the development will also be softened by existing substantial vegetation along the northern boundary of 30 Ernest Street, and proposed vegetation at the subject site.

- **Bamboo plantings**

Comment: A submission has been received from the property owners of 78 Beatrice Street raising concern with regard to bamboo plantings along the common boundary and potential for the bamboo to spread across the boundary. Council's Landscape Officer has advised that the bamboo proposed is non-evasive and is commonly placed along common boundaries.

- **Location of swimming pool and cabana**

Comment: A submission has been received on behalf of the property owners of 78 Beatrice Street in objection to the location of the proposed swimming pool, with concerns regarding the impact upon amenity of adjoining upper floor bedrooms. Swimming pools and associated entertainment areas are not an uncommon feature throughout the immediate vicinity of the site, and are featured on the majority of surrounding sites. The swimming pool area is setback from the northern common boundary, and is separated from the adjoining property by virtue of a dividing fence and a solid wall. Furthermore, there are no windows associated with the pool room or cabana directed to the northern boundary. The siting of the proposed swimming pool is consistent with all three adjoining properties to the north, and will not result in unreasonable impacts upon the amenity of adjoining properties.

The submission requests specific details relating to the use of the swimming pool and cabana, including in relation to maximum patronage and the provision of amplified music. Concerns have also been raised in relation to the use of fixed daybeds and lighting across the site. This level of detail is not required in relation to a development application for a low density residential development.

Conditions of consent have been recommended with regard to acoustic treatment of the pool pump.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, with conditions.</p> <p><i>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</i></p>

Internal Referral Body	Comments
	<p><i>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.</i></p>
Landscape Officer	<p>Supported, with conditions.</p> <p><i>The proposal is for the demolition of the existing dwelling and the construction of a dwelling house including a secondary dwelling, cabana, swimming pool, and associated landscape works.</i></p> <p><i>Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan, and against the following landscape controls of Manly DCP 2013:</i></p> <ul style="list-style-type: none"> <i>• section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation,</i> <i>• section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping.</i> <p><i>Amended Landscape Plans are provided with the development application. One proposed tree planting is included in the plans and to satisfy Manly DCP, conditions of consent shall be imposed for native tree planting, and specifically the requirement for three (3) native canopy trees within the site to satisfy clause 4.1.5.2 Landscaped Area, c) Minimum Tree Plantings, to reduce the built form. The tree planting species shall be selected in accordance with Schedule 4, Part B - Native Tree Selection.</i></p> <p><i>Additionally a range of palms, non-invasive bamboo, shrubs and groundcovers are provided to soften the built form around the perimeter of the site. The proposed screening plants along the southern boundary shall be continued to meet the eastern boundary, as the existence of neighbouring property vegetation can't be relied upon.</i></p> <p><i>An Arboricultural Impact Assessment report is provided with the development application and recommends the removal of one Oak tree (<i>Quercus robur</i>) identified as tree number 1, that is in poor condition, impacted by development, and without a design alternative to retain the tree. Additionally Exempt Species identified as tree number 2 (<i>Jacaranda</i>) and 9 (<i>Crepe Myrtle</i>) are recommended for removal. Exempt Species identified as tree number 5 (<i>European Olive</i>) is recommended for retention in the Arboricultural Impact Assessment, and removal within the Amended Landscape Plan. Conditions of consent shall be imposed for retention to ensure privacy amenity.</i></p> <p><i>No construction impact upon existing trees is permitted and conditions of consent shall be imposed on the requirement for a Project Arborist to be in attendance during works within the tree protection zone of</i></p>

Internal Referral Body	Comments
	<p>trees identified as number 3, 4, 5, 6, 7, and 8.</p> <p>Subject to the conditions of consent, Landscape Referral raise no objections to the development application.</p>
NECC (Development Engineering)	<p>Supported, with conditions.</p> <p><u>1 December 2020</u> The revised stormwater plans have addressed the previous issues and are satisfactory.</p> <p>No objection to approval, subject to conditions as recommended.</p> <p><u>6 November 2020 (Superseded)</u> The submitted drainage plans propose a pipeline along the existing driveway to the kerb in Beatrice St. A review of the survey plan indicates that there is no drainage easement in favor of the property within the right of way. There appears to be a drainage easement benefiting the site at the rear of the property. It is considered that the applicant confirms that there is a drainage easement benefiting the site and there is a pipeline within the easement with sufficient capacity for the proposed discharge from the site. The drainage design is to be amended to suit.</p> <p>Development Engineers cannot support the application due to insufficient information to address Clause 3.7 of Manly DCP.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Affordable Rental Housing) 2009

Division 2: Secondary dwellings

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. The site is located within the R2 Low Density Zone under the provisions of MLEP 2013 and as such, the proposed use is permissible with consent.

Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	Consistent. The development involves the construction of a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	Consistent. The proposal will result in a primary dwelling and a secondary dwelling on one lot of land.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	Consistent. The proposal conforms with the maximum size permitted under the provisions of cl. 5.4 of MLEP 2013.
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:	Consistent. The proposal is not proposed for refusal. See further discussion with regard to MDCP 2013

(a) site area if: (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres. (b) parking if no additional parking is to be provided on the site.	with regards to parking.
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Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	Consistent. This application does not propose any subdivision of the existing allotment.

Conclusion

The proposed development is consistent with the relevant provisions of SEPP ARH.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1122646M, dated 25 August 2020).

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

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	50	55

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	Variation	Complies
Height of Buildings	8.5m	7.9m	-	Yes
Floor Space Ratio	0.45:1	0.40:1	-	Yes
Size of Secondary Dwelling	30% of Principal Dwelling (89m ²)	77m ²	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	No
6.22 Development for the purposes of secondary dwellings in certain residential and environment protection zones	Yes

Detailed Assessment

6.4 Stormwater management

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

- (b) *includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*

Comment: On-site stormwater retention has been incorporated into the development.

- (c) *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the

development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

The consent authority can be satisfied that the proposal is consistent with the provisions of this clause.

6.12 Essential services

In accordance with the provisions of this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

The subject site is landlocked, and whilst the site benefits from a right of carriageway and an easement for drainage over adjoining properties, the site does not benefit from any easements associated with the provision of other essential services including water, electricity or communications. Noting that an existing dwelling is located on the site, it is assumed that the site is currently connected to such services, however it is considered necessary to secure appropriate easements in association with the proposed new dwelling.

The existing right of carriageway connecting the site to Beatrice Street is 4.9m wide, and has sufficient space to accommodate the existing driveway access and any necessary services. A deferred commencement condition is recommended to ensure that an easement for services is obtained prior to the activation of this consent, such that the consent authority can be satisfied that all essential services will be available, when required.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 931.4m²	Requirement	Proposed	Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1 + plus secondary dwelling	-	Yes
	Dwelling Size: 117m ²	297m ²	-	Yes
4.1.2.1 Wall Height	N: 6.5m	6.4m	-	Yes
	S: 6.7m	6.6m	-	Yes
	E: 6.6m	5.5m	-	Yes
	W: 6.5m	5.8m	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1m - 2.4m	-	Yes
	Pitch: maximum 35 degrees	Primary dwelling: 17 degrees Cabana: 35 degrees Secondary	- - 11%	Yes Yes No

		dwelling: 39 degrees		
4.1.4.1 Street Front Setbacks	N/A	N/A	-	-
4.1.4.2 Side Setbacks and Secondary Street Frontages 4.1.4.4.Rear Setbacks	N: 0.9m - 1.8m	1m - 3.1m	-	Yes
	S: 1.0m - 2.2m	1.6m - 3.2m	-	Yes
	E: 1.0m - 2.1m	3.6m - 4.8m	-	Yes
	W: 1.0m - 1.9m	1.4m - 3.0m	-	Yes
	Habitable Windows: 3m	>3m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (512.3m ²)	69.3% (626.7m ²)	-	Yes
	Open space above ground 25% of total open space (max.)	3%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (219.3m ²)	59% (370.9m ²)	-	Yes
	3 native trees	3 trees (conditioned)	-	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	>250m ²	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	At-grade	-	Yes
	1m curtilage/1.5m water side	1.2m/2.2m	-	Yes
	Area of Pool <30% of total open space (188m ²)	13% (84m ²)	-	Yes
Schedule 3 Parking and Access	Primary Dwelling: 2 spaces Secondary Dwelling: 2 Spaces	Primary Dwelling: 2 spaces Secondary Dwelling: 2 Spaces	- 2	Yes 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
3.3.1 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 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)	No	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	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Clause 3.4.1 of MDCP prescribes that new development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice. The control does not furnish any guide as to how this is to be calculated (ie: as an average across the whole day or at specific intervals), and as such, determining compliance is open to varied interpretation. For the avoidance of doubt, the potential impacts to adjoining are considered individually, as follows:

- 68 Beatrice Street**
 The rear yard of 68 Beatrice Street is located to the south of the subject site. The applicant has provided shadow diagrams which demonstrate the following impacts to the rear area of private open space in mid-winter:
 - a 34% reduction to solar access at 9am,

- a 11% reduction to solar access at 12 midday,
- a 26% reduction to solar access at 3pm.

Whilst the overshadowing that occurs at 9am slightly exceeds 33% (by 1%), the average impact between 9am and 3pm is well below 33% (23%). The area of additional overshadowing also occurs in an area that is overshadowed by dense vegetation (hedging) within the boundaries of 68 Beatrice Street.

- 70 Beatrice Street

The rear area of private open space of 70 Beatrice Street abuts a portion of the western boundary of the subject site. The proposed development will result in marginal additional overshadowing of the rear area of private open space at 70 Beatrice Street at 3pm in mid-winter, with no impact upon solar access between 9am and 2:30pm.

- 30 Ernest Street

The rear yard of 30 Ernest Street abuts the southern boundary of the subject site. The proposed development will result in additional overshadowing throughout the day, however given the depth of the area, the proportion of overshadowing is minimal. Furthermore, the area in question is overshadowed by existing landscaping along the northern boundary of 30 Ernest Street for the majority of the day in mid-winter.

- 29 Lewis Street

An area of private open space at 29 Lewis Street is located to the east of the subject site. The proposed development will result in additional overshadowing of a portion of this area at 3pm in mid-winter. The area in question is associated with the swimming pool, which is unlikely to be utilised in the middle of winter. Furthermore, other more accessible areas of private open space remain unaffected by the proposal at this time and throughout the remainder of the day.

The proposal has been considered against the objectives of this clause, as follows:

- *To provide equitable access to light and sunshine.*

Comment: The overall building height, wall heights and setbacks of the proposal with regard to the southern boundary are compliant with the numerical controls prescribed by MLEP and MDCP. The setback of the southern facade is increased at the upper floor, and exceeds the minimum setbacks prescribed. Furthermore, the facade is well articulated and roof heights have been minimised to reduce overshadowing of adjoining properties.

Concern has been raised with regard to non-compliance with the rear setback control and the associated overshadowing arising from the portion of the proposal within this area. However, the setbacks of the proposal have been considered on merit, and the overshadowing impact associated with the portion of the development within the eastern-most 8m of the site is not unreasonable. Furthermore, in most cases it should also be noted that the overshadowing occurs in portions of the site that are otherwise overshadowed by vegetation within the boundaries of each respective site.

Overall, the proposal is considered to maintain equitable access to light and sunshine.

- *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: The proposed development does not impact upon windows associated with living spaces or habitable rooms of adjoining properties and equitable access to solar access within the rear yards of adjoining properties is maintained.

- *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: As above, the proposal provides generous setbacks to the southern boundary, in excess of those prescribed by MDCP. Further, the building as a whole is maintained well below the height limit, with minimal roof heights and good modulation.

Despite additional overshadowing of adjoining properties, the proposed development is consistent with the objectives of this control and is supportable on merit.

3.4.2 Privacy and Security

Windows

Clause 3.4.2.1 of MDCP prescribes the use of narrow, translucent or obscured glass windows, where necessary, and that where close to boundaries, windows shall be off-set from those in the adjacent building. Further, clause 4.1.4.2 of MDCP requires windows to be setback 3m from a common boundary. A number of submissions were received which raise concern with regard to overlooking arising from the proposal. Windows on the outer walls of the proposal are considered as follows:

- Overlooking from ground floor windows will be generally mitigated by boundary fencing and existing/proposed landscaping.
- Window 27 on the northern elevation of the upper floor (loft) of the secondary dwelling are setback 3m from the northern side boundary. The use of screening or obscured glass is not necessary noting the use of the internal space (bedroom), the screen planting proposed along the northern boundary, and the setback and height of the adjacent single storey structure to the north.
- Windows 12 and 13 on the western elevation of the upper floor of the primary dwelling are setback 3m from the western boundary, and 9m from windows on the adjoining dwelling to the west. The windows also feature sill heights of 1.5m to mitigate overlooking of the adjoining property, and as such, no further mitigation measures are required.
- W25 on the southern elevation of the upper floor of the primary dwelling is setback 3.1m from the southern boundary. The window is associated with the doorway/entrance to the master bedroom, with a sill height of 1.3m. The adjacent site features extensive landscaping to screen the proposed development. No further mitigation measures are required.
- Windows W21, W222, W23 and W24 comprise frosted glass to mitigate overlooking of adjoining properties.

Balcony

Clause 3.4.2.2 of MDCP prescribes the need for architectural or landscape screens to balconies to limit overlooking of nearby properties. The proposal incorporates a narrow balcony adjacent to the upper

floor bedrooms that is located within 9m of private open space of the dwelling to the east at 29 Lewis Street. A condition of consent is recommended to require a screen along the eastern end of the balcony.

3.4.3 Maintenance of Views

The proposed development will impact upon views of Manly, including St Patrick's Cathedral and the ocean, currently enjoyed from 68 Beatrice Street, as shown in **Figure 1** and **Figure 2**, below. The view in question is a distant view, that is obtained in a north-easterly direction across the side boundary of 68 Beatrice Street, over the subject site, and over the roof of 29 Lewis Street. The view is obtained through a window on the rear facade of the upper floor associated with a bedroom, from both a seated and standing position. The upper floor of the dwelling at 68 Beatrice Street is limited in size, being less than half of the level below, and is situated towards the front of the site.



Figure 1: View from Master Bedroom at 68 Beatrice Street



Figure 2 – View from Master Bedroom at 68 Beatrice Street (zoom)

As evident in Figures 1 and 2, the view corridor in question is somewhat vulnerable to future vegetation growth associated with existing and or proposed plantings at 68 Beatrice Street, the subject site and 29 Lewis Street. The view in question is not obtained from any other location within the dwelling at 68 Beatrice Street; however views of the City and Chatswood skylines are available in a west and south-westerly direction from windows associated with a living room and a balcony at the front facade of the upper floor.

Upon analysis of the angle of the views, and with assistance of diagrams provided by the applicant, the proposed development will obstruct the majority of this view corridor, including St Patrick's Cathedral and the ocean. With respect to the use of the room, the availability of other views, and the distant/vulnerable nature of the view in question, the impact of the development upon the whole of the property is considered to be minor.

The submission received on behalf of the owners of 68 Beatrice Street raises specific objection to the impact upon this view, stating that the impact arises as a result of non-compliance with the 8m rear setback prescribed by MDCP 2013. As discussed with regard to clause 4.1.4 of MDCP 2013, the subject site does not conform to the standard front, rear and two sides approach of MDCP 2013, and each setback has been assessed with regard to the side setback control and on merit.

The impact can be attributed to the upper floor master bedroom suite, which is located 3.1m from the southern boundary and 4.8m from the eastern boundary. Based on the 1/3 of the wall height setback prescribed by MDCP 2013, both setbacks exceed the minimum setbacks prescribed by MDCP 2013 by 1m and 2.7m respectively. However, even if the proposal was considered to be non-compliant with the 8m rear setback prescribed by MDCP 2013, amendments are not considered to be warranted as the impact associated with a built form setback 8m from the eastern boundary would still impact upon the views to a comparable degree.

It is also relevant to note that, as demonstrated in **Figure 3** and **Figure 4**, a development designed to strictly conform with the 8m setback and 1/3 wall height side setback control would have a greater impact than that currently proposed.

Note: Figures 3 and 4 can be interpreted as follows:

- The blue lines on Figure 3 demonstrate the existing view corridor.
- The pink lines in Figures 3 and 4 represent the impact associated with the proposed development.
- The green lines in Figures 3 and 4 represent the impact associated with the proposal if amended to achieve an 8m setback to the eastern boundary.
- The orange lines in Figures 3 and 4 represent the impact associated with a proposal designed to achieve an 8m setback to the eastern boundary and the minimum southern setback permitted on the site.

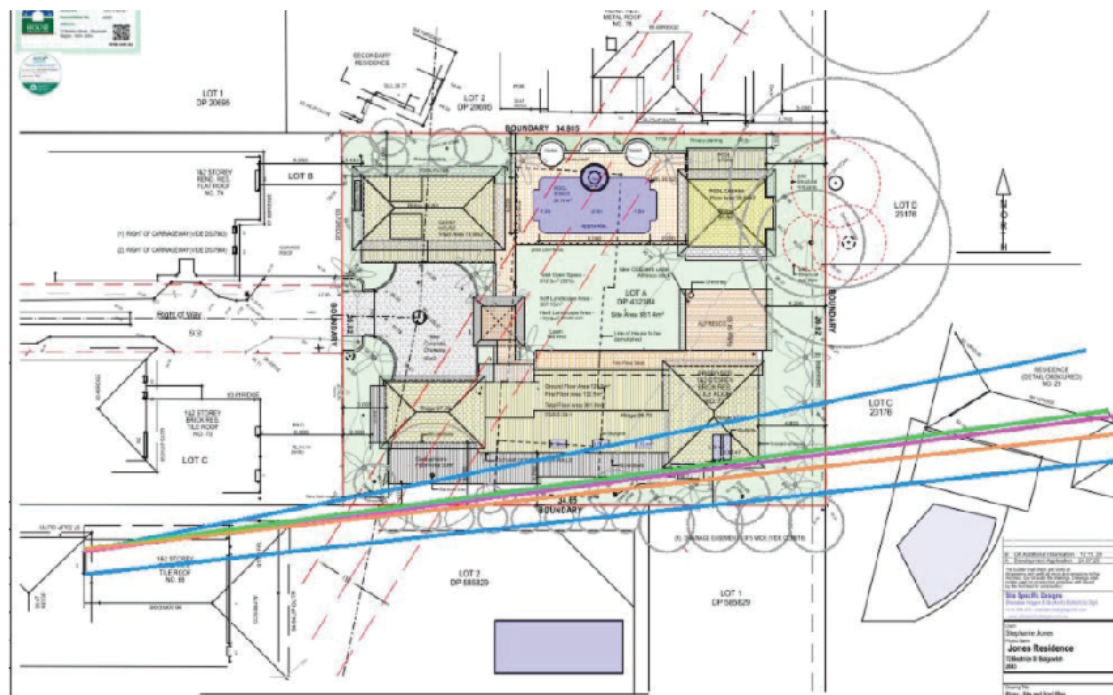


Figure 3 – View angles from 68 Beatrice Street



Figure 4 – Approximate positions of view angles

Whilst the impact upon the view currently enjoyed from 68 Beatrice Street is acknowledged, the impact is not considered to be unreasonable in the circumstances of the proposed development.

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

The proposed development is compliant with the building height, wall height and number of storeys controls prescribed by this clause. However, the roof of the secondary dwelling, which has a pitch of 39 degrees, is inconsistent with the 35 degree maximum prescribed by this control.

The roof in question facilitates a loft space within the secondary dwelling. This design approach minimises the apparent size of the secondary dwelling and gives the perception of a single storey structure, despite the two storeys proposed. The incorporation of the loft within the roof form is preferable when compared to a typical two storey structure, which is otherwise permitted on the

site. The roof of the secondary dwelling does not result in any unreasonable overshadowing of the adjoining property to the west, noting that the structure adjacent to the boundary at 74 Beatrice Street is a garage, and areas of private open space are located at the front of that property.

As such, the proposed roof pitch does not detract from consistency with the objectives of the control and the proposal is supportable on merit.

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

The subject site is landlocked, and does not conform to the standard front, rear and two side approach anticipated by this control. The surrounding subdivision pattern is irregular, and there is no consistent arrangement of built form on surrounding sites. With this in mind, the setbacks have each been considered with respect to the side setback control, which requires a setback equal to or greater than 1/3 of respective wall height. Based on this calculation, each setback is compliant with, if not in excess of, the control.

Furthermore, the proposal is consistent with the objectives of the setback control, as follows:

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

Comment: The subject site does not adjoin the street. Whilst the central part of the site will be visible from the existing driveway access to Beatrice Street, the proximity of the building to setbacks will not be perceived from the public domain.

- *To ensure and enhance local amenity by:*
 - *providing privacy,*
 - *providing equitable access to light, sunshine and air movement;*
 - *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 siting of the proposed development is considered to be an appropriate response to the landlocked nature of the site, and a balanced approach to the relationship with all seven immediately adjoining properties. The setbacks of the proposed development do not compromise privacy of adjoining dwellings, nor attribute to any unreasonable impacts with regard to sunlight and ventilation. Further, as discussed with regards to clause 3.4.3 (Maintenance of Views) of MDCP 2013, the proposal does not result in unreasonable impacts upon existing views. The setbacks provide sufficient spatial separate between buildings, and are appropriate noting the lack of any defining pattern or rhythm of adjoining built form or the overall subdivision pattern.

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

Comment: As above, the proposed development is considered to be an appropriate design response, which demonstrates flexibility in the siting of proposed built form.

- *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 provides landscaped areas well in excess of the numerical controls prescribed by MDCP 2013, and conditions of consent are recommended to ensure that an appropriate landscaped treatment will be maintained for the life of the development.

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

Comment: N/A - the site is not bush fire prone.

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

Schedule 3 of MDCP 2013 prescribes the need for 2 parking spaces for the primary dwelling and 2 parking spaces for the secondary dwelling. Whilst the proposal provides 2 parking spaces for the primary dwelling, no parking is proposed in relation to the secondary dwelling.

SEPP ARH is applicable in relation to the proposal. In accordance with clause 22(4)(b) of SEPP ARH, a consent authority must not refuse consent to a secondary dwelling to which SEPP ARH applies on the grounds of parking, where no additional parking is to be provided on site for the secondary dwelling. As such, despite non-compliance with MDCP 2013, the application cannot be refused in this regard.

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 \$11,600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,160,000.

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;
- 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

The proposed development has been considered with respect to all relevant plans and policies, and after detailed review, it is concluded that the proposal will not result in any unreasonable impacts upon the amenity of adjoining properties, the wider locality, or the environment. Subject to conditions of consent, the concerns raised in submissions received in objection to the proposal are considered to be reasonably mitigated, and no issue has been raised which would warrant the refusal of the proposal.

Accordingly, the application is recommended for approval, subject to a deferred commencement condition requiring the establishment of an easement or easements to facilitate legal access for services, and additional conditions of consent.

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

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a five (5) year time frame for Deferred Commencement Consents detailed within Section 95 of the EP&A Regulation 2000 to DA2020/1094 for Demolition works and construction of a dwelling house including a secondary dwelling and swimming pool on land at Lot A DP 432384,72 Beatrice Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

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

DEFERRED COMMENCEMENT CONDITIONS

1. Easement for Services

An easement for services is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919 to facilitate all necessary service connections between Beatrice Street and the subject site.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within five (5) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

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

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site and Roof Plan DA01, revision B	12 November 2020	Site Specific Designs
Ground Floor Plan DA02, revision B	12 November 2020	Site Specific Designs
First Floor Plan DA03, revision B	12 November 2020	Site Specific Designs
Elevations (East & North) DA04, revision B	12 November 2020	Site Specific Designs
Elevations (South & West) DA05, revision B	12 November 2020	Site Specific Designs
Interior Elevations DA06, revision B	12 November 2020	Site Specific Designs
Interior Elevation and Pool Section DA07, revision B	12 November 2020	Site Specific Designs
External Finishes Schedule	August 2020	Site Specific Designs

Engineering Plans		
Drawing No.	Dated	Prepared By
SW01, SW02, SW03, SW04 & SW05, all Revision A	26 November 2020	Greenwood Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate 1122646M	25 August 2020	Chapman Environmental Services Pty Ltd
Arboricultural Impact Assessment Report	11 August 2020	Urban Arbor
Preliminary Geotechnical Assessment J2789	14 August 2020	White Geotechnical Group

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan LP01, revision B	19 November 2020	Landart.

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	31 August 2020	Site Specific Designs

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

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

3. Solid Fuel Burners

No approval is granted under this Development Consent for the installation or use of any solid fuel burners/fireplaces.

Reason: To ensure consistency with the outcome anticipated by Council.

4. Prescribed Conditions

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) 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 2018
 - (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 sewerer 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

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$11,600.00 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 \$1,160,000.00.

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.

7. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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

8. Construction Traffic Management Plan

The Applicant is to submit an Construction Traffic Management Plan ('CTMP') to Council for approval prior to issue of the Construction Certificate. The CTMP shall be prepared by an appropriately certified person and is to detail:

- a. Parking of trades and service people,

- b. Size, weight, dimensions and frequency of truck movements along the right of carriageway,
- c. Management of right of carriageway, noting shared use of the driveway,
- d. Storage of goods and materials.

Once approved, copies of the CTMP are to be furnished to the property owners of 70 Beatrice Street and 74 Beatrice Street for their records. This is to occur at least 7 days prior to the commencement of any works on site.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

9. Amendments to the approved plans

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

- a) A 1.8m high privacy screen is to be incorporated along the eastern elevation of the upper floor balcony to restrict overlooking of the adjoining dwelling to the east.

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.

10. 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.

11. Laundry Facilities

The new building that is proposed to be constructed as a secondary dwelling is required to comply with Part 3.8.3.2 of Volume 2 of the Building Code of Australia –‘Facilities’.

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 building occupant health and amenity

12. 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 and generally in accordance with the concept drainage plans prepared by Greenwood Consulting Engineers, drawing number 2020093 SW01, SW02, SW03, SW04, SW05 Revision A dated 26/11/2020. 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:

- a) The connection to the inter-allotment drainage pipe is to be via a "Flowcon Conconnect" or equivalent
- b) An inspection eye must be provided over the connection to the inter-allotment drainage connection.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

13. 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:

- i "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- i 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. 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):

1. 70 Beatrice Street, Balgowlah Heights
2. 74 Beatrice Street, Balgowlah Heights

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.

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.

16. Tree removal within the property

This consent approves the removal of the following tree within the property (as recommended in the Arboricultural Impact Assessment):

- tree 1: *Quercus robur* (English Oak).

The following Exempt Species do not require Council consent for removal:

- tree 2: *Jacaranda mimosifolia* (Jacaranda)
- tree 9: *Lagerstroemia indica* (Crepe Myrtle)

Reason: to enable authorised building works.

Note: 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.

17. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

- i) works as listed in section 11.5 Site Specific Tree Protection Recommendations, including tree protection fencing for existing trees identified as trees 3, 4 and 5.
- ii) works as listed in section 11.6 Site Specific Tree Protection Specifications,
- iii) works as listed in section 12 Construction Hold Points for Tree Protection,
- iv) canopy pruning to existing tree 3 located within adjoining property, in accordance with section 9.2 Canopy Pruning Tree 3, and limited to the common boundary,
- v) works in the tree protection zone of existing trees 6, 7, and 8 within adjoining property.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: tree protection.

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:

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

22. 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.

23. Adherence with the CTMP

The site is to be managed in accordance with the Approved CTMP required by this consent.

Reason: To ensure that construction is managed accordingly in light of the access constraints.

24. Tree and vegetation protection

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

- i) all trees and vegetation within the site not approved for removal,
- 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 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) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

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.

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

25. Landscape completion

Landscaping is to be implemented in accordance with the Landscape Plan A2, issue B,

prepared by Landart, inclusive of the following conditions:

- i) three (3) native canopy trees shall be planted within the site, selected in accordance with Schedule 4, Part B - Native Tree Selection, including two 92) located within the rear setback,
- ii) the nominated Cupaniopsis anacardioides shall be deleted and replaced with a native canopy tree in accordance with Schedule 4, Part B - Native Tree Selection,
- iii) tree planting shall be located within a 9m² deep soil area and be located a minimum of 3 metres from existing and proposed buildings,
- iv) tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views,
- vii) the nominated screening plants along the southern boundary shall be continued to meet the eastern boundary.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: environmental amenity.

26. Condition of retained vegetation - Project Arborist

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact 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.

27. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports relating to 70 Beatrice Street and 74 Beatrice Street, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

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

28. 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 shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA), a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan) and Hydraulic Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment 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 over the on-site storm water disposal structures is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

29. **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.

30. Swimming Pool Pump Requirements

The swimming pool pump is to be enclosed in an acoustically treated/sealed container to ensure that noise associated with the operation of the system does not exceed 5dBA above background noise levels at any nearby residential receiver.

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

Reason: To minimise impacts upon adjoining properties.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**31. Landscape maintenance**

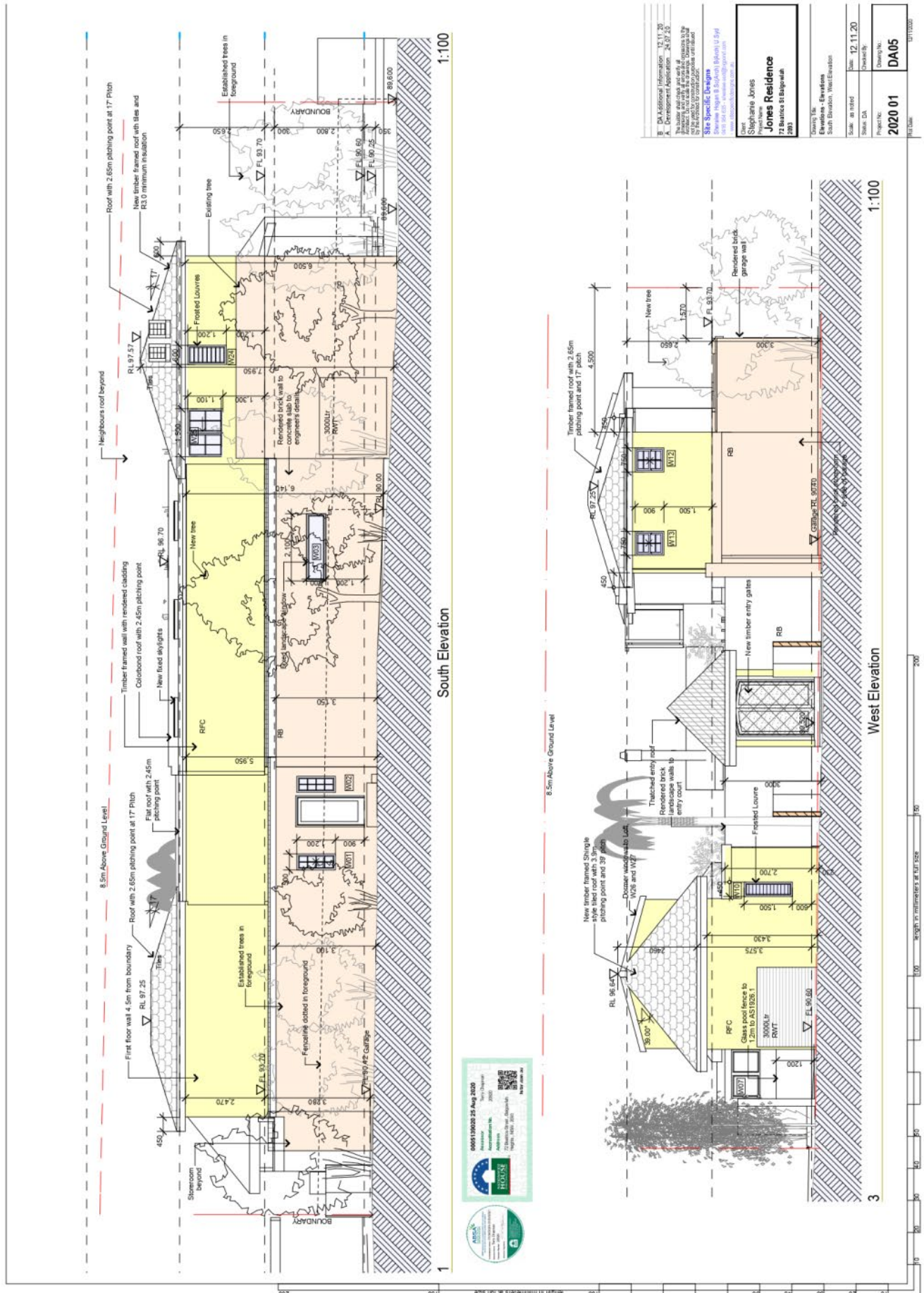
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

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 Landscape Plan and conditions of consent.

Reason: to maintain local environmental amenity.







ITEM 3.2

**MOD2020/0433 - 26 BERITH STREET, WHEELER HEIGHTS -
MODIFICATION OF DEVELOPMENT CONSENT DA2011/0284
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION
OF TWO DWELLING HOUSES**

REPORTING MANAGER **Anna Williams**

TRIM FILE REF **2020/769753**

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** Mod2020/0433 for Modification of Development Consent DA2011/0284 granted for demolition works and construction of two dwelling houses on land at Lot 17 DP 8871, 26 Berith Street Wheeler Heights, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	Mod2020/0433
Responsible Officer:	Danielle Deegan (Consultant Planner)
Land to be developed (Address):	Lot 17 DP 8871, 26 Berith Street WHEELER HEIGHTS NSW 2097
Proposed Development:	Modification of Development Consent DA2011/0284 granted for demolition works and construction of two dwelling houses
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:	Darren Crichton, Vanessa Walford, Cecilia Hill
Applicant:	Cecilia Hill
Application Lodged:	09/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential – Alterations and additions
Notified:	18/09/2020 to 02/10/2020
Advertised:	Not advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	N/A

EXECUTIVE SUMMARY

The proposal is for modification of Development Consent DA2011/0284 granted for demolition works and construction of two dwelling houses, determined by Warringah Council on 20 May 2011. The consent was issued subject to deferred commencement conditions with activation occurring on 29 October 2015.

The proposal involves internal changes, minor changes to some windows and an increase in the building height for the rear dwelling (house 2).

There have been three submissions made in regard to this modification.



The assessment concludes that the modified proposal is appropriate for the site. The changes to windows will not result in additional privacy impacts. The increase in the height of house 2 is required to provide clearance to the sewer pipe below. The modified proposal will have a negligible impact on views and shadowing. The building height remains below the 8.5m building height development standard.

It is recommended that the application be approved.

PROPOSED DEVELOPMENT IN DETAIL

On 20 May 2011, Deferred Commencement Consent DA2011/0284 was granted for demolition works and construction of two dwelling houses. This Section 4.55(1A) Modification has been submitted to Council seeking the following amendments:

Front dwelling (house 1):

- Lower roof from RL 85.485 to RL 85.43
- Revision of the ground floor layout to include a media room
- Changes to the first-floor plan layout to allow for an ensuite and walk-in robe attached to bedroom 5, bedroom 3 and walk-in robe to be converted to two bedrooms (2 and 3)
- Changes to window sizes
- Changes to the courtyard area

Rear dwelling (house 2):

- Changes to the first-floor plan layout to convert bedroom 2 to an ensuite and walk-in robe connected to bedroom 1 (formerly bedroom 3), ensuite to become bedroom 2 and bedroom 1 becomes bedroom 3
- Changes to all finished floor levels on ground floor raising to RL78.175 from RL76.5 (1.7m) to allow for compliance with Sydney Water sewer clearance requirements.
- Corresponding increase in maximum roof height from RL83.91 to RL85.365 (1.46m)
- Changes to window sizes

ASSESSMENT INTRODUCTION

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

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



SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 – 4.3 Height of buildings
Warringah Development Control Plan 2011 – B1 Wall heights
Warringah Development Control Plan 2011 – B3 Side boundary envelope
Warringah Development Control Plan 2011 – D7 Views

SITE DESCRIPTION

Property Description:	Lot 17 DP 8871, 26 Berith Street WHEELER HEIGHTS NSW 2097
Detailed Site Description:	<p>The subject site is located on the western side of Berith Street between Carlisle Street and Rose Avenue. The land has an area of 1,211.4 square metres (sqm) with a maximum width of 13.4 metres (m) and a maximum depth of 90.3m. The property is located in a residential precinct within the Wheeler Heights area and the land has a moderate slope toward the rear. The site currently contains the following structures;</p> <ul style="list-style-type: none"> a weatherboard dwelling with ancillary structures including garage, domestic sheds and landscaped garden areas. <p>The Wheeler Heights Primary School land is opposite the site and a pedestrian crossing is located within 20m of property frontage. Surrounding residential development contains a mix of new two storey and older style single storey dwellings.</p> <p>The land is within "Area D" for landslip classification and is not mapped as being within "flood planning precinct" or affected by acid sulfate soils. There are no Warringah LEP 2011 heritage items within or adjacent the site.</p>



SITE HISTORY

On 20 May 2011, Development Application No.2011/0284 for demolition work and the construction of two dwelling houses was approved by Council as a deferred commencement consent. The deferred commencement conditions required evidence of the creation of a stormwater easement and plans detailing on site stormwater system design.

On 29 October 2015, Council advised the applicant that the deferred commencement matters were satisfied and that the consent was activated.

On 12 September 2018, Development Application No.2018/0424 for subdivision of a dual occupancy development was approved by Council.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submissions from:

Name:	Address:
C. Hannemann	4 Carlisle St, Wheeler Heights
H. & M Holmes	17 Berith St, Wheeler Heights
K. and E Cullen	28 Berith St, Wheeler Heights

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

- **Potential view loss**
- **Asbestos**



Request for building height templates from the owners of 4 Carlisle Street and 17 Berith Street

Comment

Given the proposal's compliance with the building height development standard and the expected negligible impact on views, a request for the applicant to erect building height templates on the site is not considered warranted in the circumstances of the case.

View impacts to 4 Carlisle Street

Comment

An assessment under Section D7- Views in this report has found that the proposal is consistent with the NSW Land and Environment Court established planning principle for view sharing. In particular, the maintenance of a view corridor through the centre of the site and the nature of the views (distant and filtered lake views) provide a situation in which the impact on views from 4 Carlisle Street is negligible and not unreasonable given the largely complying nature of the development.

View impacts to 17 Berith Street.

Comment:

No 17 Berith Street is located approximately 40m to the south-east of the street front frontage of the subject site and is elevated approximately 6m above than the subject site. The view corridor from the front balcony of this dwelling will be unaffected. Only the single storey front carport of proposed house 1 will be visible from this property. The proposed additional height to house 2 will not be visible from 17 Berith Street.

Safety concerns regarding asbestos disposal

Comment:

A recommended condition of consent will require the appropriate disposal of asbestos.

REFERRALS

Internal Referral Body	Comments
Engineering	The proposal is supported.

External Referral Body	Comments
N/A	N/A

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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 the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2011/0284, in full, with amendments detailed and assessed as follows:

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

Section 4.55 Assessment

Section 4.55(1A) Minor 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:	

Section 4.55(1A) Minor Modifications	Comments
(a) it is satisfied that the proposed modification is of minimal environmental impact,	The modified development involves relatively minor changes to the approved development, such that it does not substantially alter the overall bulk and scale of the development, noting that the increase in the height of house 2 is partly the result of reduced excavation. Impacts arising from the proposed modifications are minimal as discussed in the body of this report.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	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 DA2011/0284. Development Application DA2011/0284 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with— (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	Three submissions were received in relation to this application. They are addressed above.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under section 4.55 the consent authority must take into consideration 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 'Matters for Consideration'	Comments
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	Warringah Development Control Plan 2011 applies to the proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p>Clause 92 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>Clause 98 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>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original 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 Warringah Development Control Plan 2011 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	Three submissions were received in relation to this application. 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.



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

Two amended BASIX Certificates have been submitted with the application (see Certificate Nos. 347396S_03, and 347440S_03, dated 17 August 2020). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the amended BASIX Certificates.

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

Development Standard	Requirement	Approved	Proposed	% variation	Complies
Height of buildings	8.5m	7.3m	8.15m	Nil	Yes

Compliance Assessment

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

Detailed Assessment



4.3 Height of buildings

The modified proposal increases the height of house 2 by 1.46m to a height of 8.15m. The proposal therefore remains compliant with the 8.5m building height development standard as well as achieving the objectives of clause 4.3.

WARRINGAH DEVELOPMENT CONTROL PLAN

Built Form Controls

Built form control	Requirement	Proposed	% variation	Complies
B1 Wall height	7.2m	6.8m (house 1) 7.4m (house 2)	Nil 2.7%	Yes No
B3 Side boundary envelope (house 1)	4m and 45 degrees at boundary	Within envelope	N/A	Yes
B3 Side boundary envelope (house 2)	4m and 45 degrees at boundary	Minor encroachment	N/A	No
B5 side boundary setbacks	0.9m (north)	> 0.9m	N/A	Yes
	0.9m (south)	> 0.9m	N/A	Yes
B7 Front boundary setbacks	6.5m	6.5m	N/A	Yes
B9 rear boundary setbacks	6m	14m	N/A	Yes
D1 Landscaped Open Space	40%	45%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
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	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes

Detailed Assessment

Part B General Controls

Wall heights

House 1 remains compliant with the 7.2m wall height control. The proposed modifications result in a minor breach to wall height for house 2, along a small section of the northern elevation where the wall height is 7.365 metres. The non-compliance arises as the land slopes away toward the rear and north boundaries. The non-compliance occurs for a short distance (approximately 2m) only. The modified proposal remains compliant with the objectives for the wall height control.

Side boundary envelope

House 1 remains compliant with the side boundary envelope control. The proposed modifications result in a minor encroachment to the side boundary envelope for house 2 at the north-western corner. The non-compliance arises as the land slopes away toward the rear and north boundaries. The non-compliance applies to a 0.3m upper section of the wall only, for a minimal distance. The modified proposal remains compliant with objectives for the side boundary envelope control.

Part C Siting Factors

D7 Views

Merit consideration

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

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

Comment:

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:

The views in question are distant bushland and lake views towards the north, from the upper rear deck of 4 Carlisle Street. These views are partially obscured by trees and built form.

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 4 Carlisle Street currently enjoys views in a northerly direction over the subject site from an elevated deck/terrace (and associated living areas and kitchen) on its northern elevation. The views available are district, bushland and lake views to the north-west, north and north-east.

The views are depicted in the photographs below.



Figure 1. North-westerly view from the rear deck of 4 Carlisle St



Figure 2. Northerly view from the rear deck of 4 Carlisle St (this view will be retained)



Figure 3. Northerly view from a seated position, 4 Carlisle St (this view will be retained)

3. Extent of impact

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



Comment to Principle 3:

The water view of the lake comprises of a small portion of the overall outlook from this dwelling. The loss of water view will be negligible. The setbacks between the proposed two dwellings will allow the view corridor, directly to the north of 4 Carlisle Street to be retained.

Proposed House 2 is located to the north-west of 4 Carlisle St. While there are some filtered water views in this direction (see Figure 1) over the subject site, the proposed increase in building height will have a negligible impact on views in this direction. The broader district and bushland views will be retained. The removal of trees from the subject site may result in an increase in the water views available from 4 Carlisle Street.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The amended proposal complies with the building height, landscaped area and setback controls. The minor breach to wall height and building envelope along the northern elevation does not affect views. Overall, the modified proposal is assessed as a reasonable development. In response to the 'more skillful design' question, the additional height is a result of the clearance required to the existing sewer pipe, located below dwelling 2, by Sydney Water. The maintenance of the approved building heights is therefore not possible. Reasonable view sharing has been achieved.

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

Comment:

The modified proposal represents an appropriate design that is complementary to the surrounding urban environment.

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

Comment:

Trees were assessed as part of the assessment of DA2011/0284. There are no additional tree impacts arising from the modified proposal.

7.12 CONTRIBUTIONS

Condition 5 of consent DA2011/0284 requires a payment under the Warringah Section 94A Development Contributions Plan.

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

It is considered that the modified proposal 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. DA2011/0284 granted for demolition works and construction of two dwelling houses at Lot 17 DP 8871, 26 Berith Street Wheeler Heights, subject to the following:

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 and Documents

Architectural Plans – Endorsed with Council's stamp		
Drawing No.	Dated	Prepared by
Proposed Site Plan Rev.11	3.9.2020	JR Design & Drafting
Ground Floor Plan House 1 Rev.11	3.9.2020	JR Design & Drafting
First Floor Plan House 1 Rev.11	3.9.2020	JR Design & Drafting
Slab Plan House 1 Rev.11	3.9.2020	JR Design & Drafting
Roof Plan, Section A-A & Window Schedule House 1 Rev.11	3.9.2020	JR Design & Drafting
House 1 Elevations Rev.11	3.9.2020	JR Design & Drafting
House 1 Elevations Rev.11	3.9.2020	JR Design & Drafting
Ground Floor Plan House 2 Rev.11	3.9.2020	JR Design & Drafting

First Floor Plan House 2 Rev.11	3.9.2020	JR Design & Drafting
Roof Plan, Section A-A & Window Schedule House 2 Rev.11	3.9.2020	JR Design & Drafting
Slab Plan House 2 Rev.11	3.9.2020	JR Design & Drafting
House 2 Elevations Rev.11	3.9.2020	JR Design & Drafting
House 2 Elevations Rev.11	3.9.2020	JR Design & Drafting
Soil Sedimentation & Waste Management Plan Rev.11	3.9.2020	JR Design & Drafting
Landscape Plan Rev.11	3.9.2020	JR Design & Drafting

Report/Documentation – All Recommendations contained within		
Report No/ Page No/ Section No.	Dated	Prepared by
BASIX Certificate No. 347396S_03 (House 1) BASIX Certificate No. 347440S_03 (House 2)	17 August 2020	Building and Energy Consultants Australia

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

B. The addition of the following condition:

Asbestos

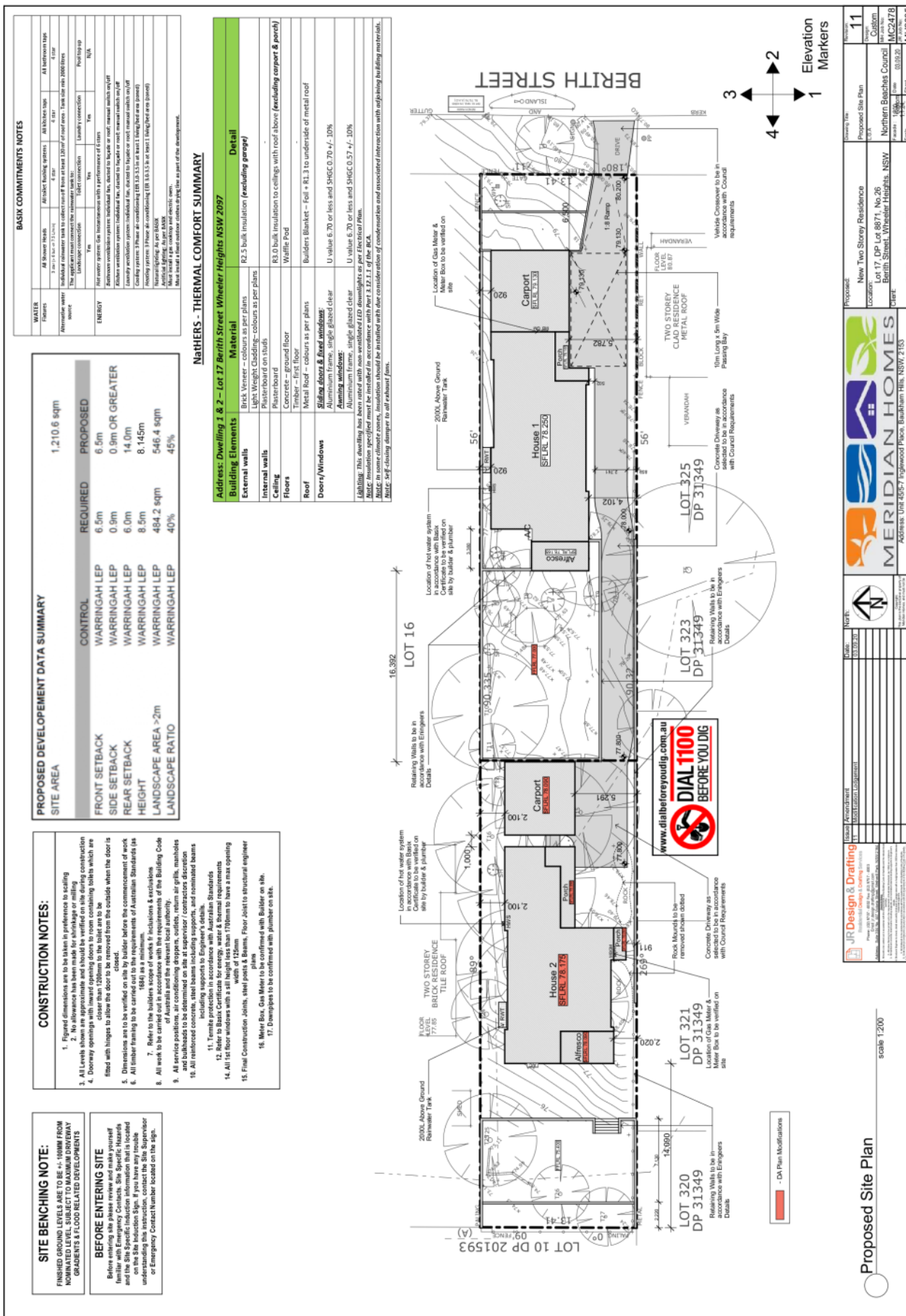
- 15A. Where asbestos material shall be removed or disturbed as a result of any proposed demolition, alteration or addition, all work must be carried out by a person licensed under the Work Health and Safety Regulation 2017 and undertaken in accordance with the requirements of the Protection of the Environment Operations (Waste) Regulation 2014. All asbestos to be removed must be disposed of at a tip recommended by the NSW Environment Protection Authority and under no circumstances shall be re-used or sold.

In signing this report, I declare that I do not have a Conflict of Interest.

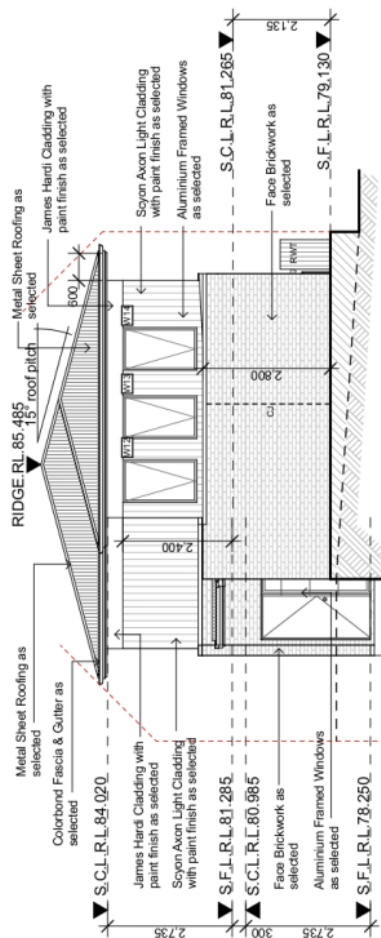
Signed



Danielle Deegan, Consultant Planner

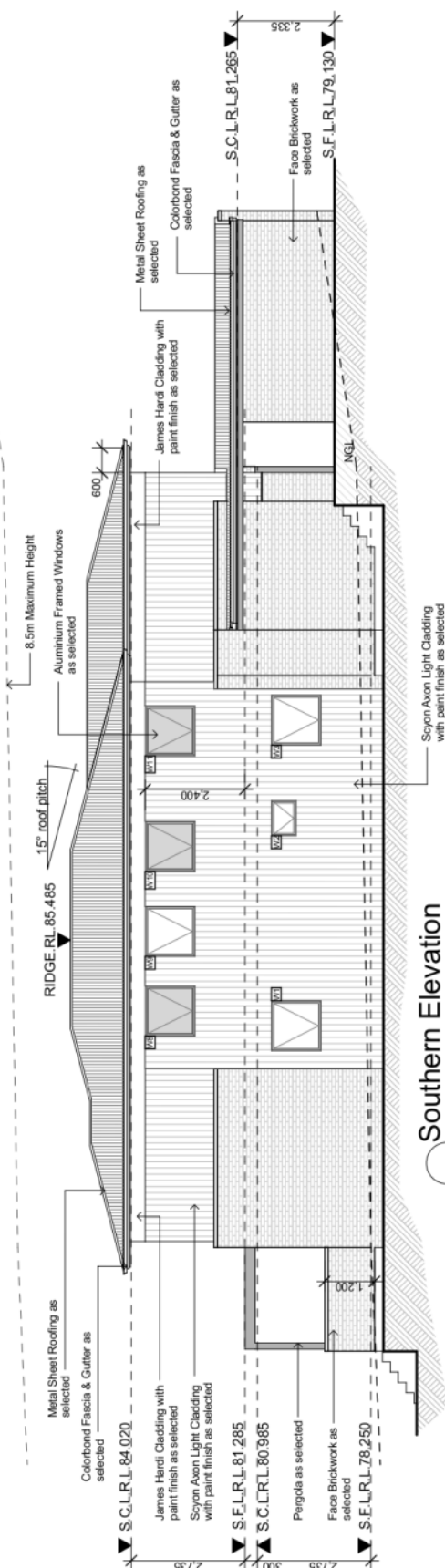


- ## CONSTRUCTION NOTES:
1. Figure dimensions as to be taken in preference to scaling
 2. All work to be carried out in accordance with the requirements of the Building Code of Australia
 3. All Levels above ground level and should be verified on site during construction
 4. Downey openings with approved openings doors to room containing liquids which are cleaner than 1200mm to the ceiling as to be confirmed with the Engineer
 5. Floor to be finished with the concrete when the floor is fixed with bays to allow the floor to be fixed and set
 6. Dimensions are to be verified on site by the Builder before the commencement of work
 7. All work to be carried out in accordance with the requirements of Australian Standard AS 1604 as a minimum.
 8. Refer to the building section of works for inclusions & exclusions
 9. All work to be carried out in accordance with the requirements of the Building Code of Australia
 10. All service pipelines, air conditioning systems, water, storm air, gas, radiators and balconies to be determined on site at supervisor's contractor's discretion
 11. All services to be confirmed with the Engineer before construction begins including
 12. All services to be confirmed with the Engineer's details.
 13. Tensile protection in accordance with Australian Standards
 14. Refer to B1. Certificate for energy, water & thermal requirements
 15. Final Connection Joints, water & Storm. Refer to structural engineer
 16. New Work. See Plans to be confirmed with Builder on site.
 17. Drawings to be confirmed with Engineer on site.



Eastern Elevation

scale 1:100



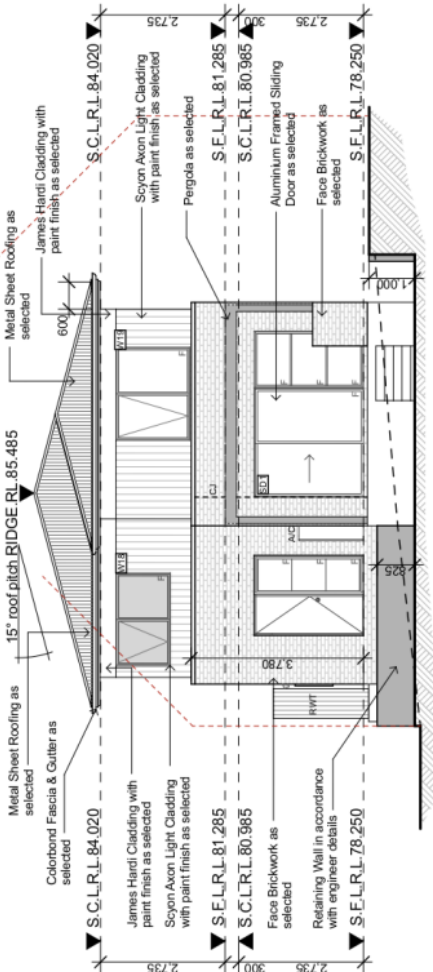
Southern Elevation

scale 1:100

 JR Design & Drafting Residential Design & Drafting Services Phone: 080 997 0022 Fax: 091 9792 4603 Website: www.jrdesign.co.nz 1800-Design (3636) or 091 9792 4603 1800-Design (3636) or 091 9792 4603	Issue / Amendment	North	 MERIDIAN HOMES Address: Unit 4/5/6/7 Inwood Place, Baulkham Hills, NSW 2153 Phone: 1300 855 136 Website: www.meridianhomes.co.nz	   	Proposed: New Two Storey Residence Location: Lot 17, DP Lot 8871, No.26 Berth Street, Wheeler Heights, NSW Client: Northern Beaches Council	Drawing Title: House 1 Elevations L.C.A. Northern Beaches Council MC24/78 MC20/35 28 July 2018 7 of 18	Revision: 11 Custom
	Issue / Amendment 11 Modification Lodgement	Date 03.09.20					



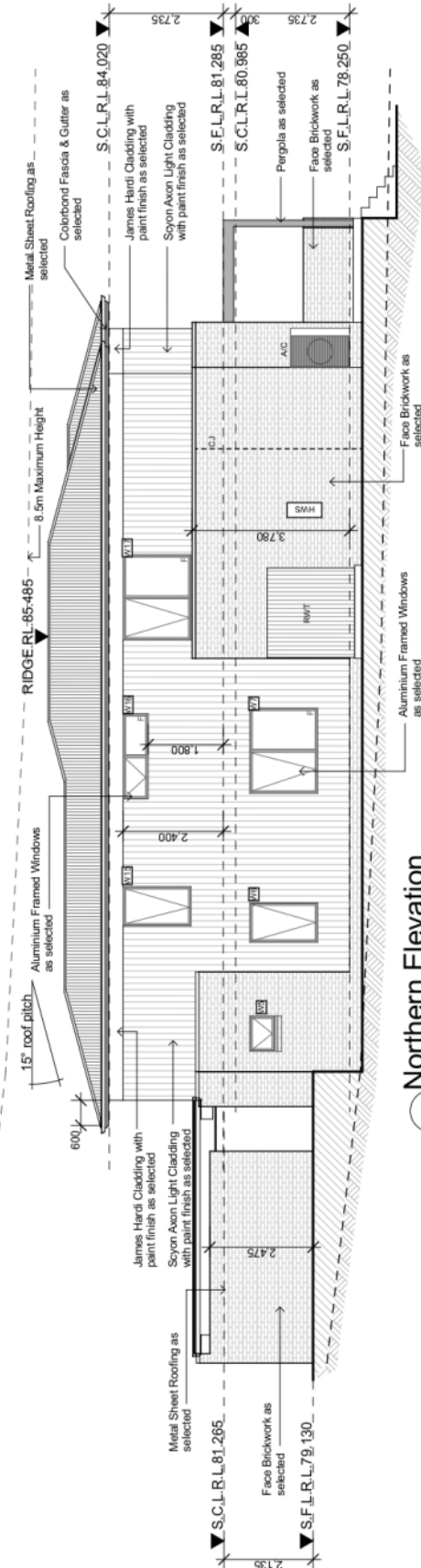
CONSTRUCTION NOTES:	
1. Figure dimensions are to be taken in preference to calling.	
2. No allowance has been made for shrinkage or swelling.	
3. All levels shown are approximate and should be verified on site during construction.	
4. Down-sloping surfaces shall be finished with a minimum fall of 1:100.	
5. Dimensions are to be verified on site by builder before the commencement of work.	
6. All timber framing to be carried out to the requirements of Australian Standard (AS 1684) as a minimum.	
7. Refer to the building scope of work for details of inclusions & exclusions.	
8. All work to be carried out in accordance with the requirements of the Building Code of Australia and the relevant local authority.	
9. All service pathways, air conditioning, gas, water, drainage, and electrical conduits, to be determined on site at supervisor / contractor discretion.	
10. All reinforced concrete, steel beams including supports, and nominated beams including lintels, to be finished in accordance with Australian Standards.	
11. Timber protection in accordance with Australian Standards.	
12. Refer to back Certificate for energy, water & thermal requirements.	
13. All 1st floor windows with a sill height less than 1100mm to have a max opening width of 120mm.	
14. First Construction details, door profiles, and floor plans to be confirmed with engineer.	
15. Main Blue Gun Meter to be confirmed with Builder on site.	
16. Overlays to be confirmed with Builder on site.	



Western Elevation

Elevation 4

scale 1:100



Northern Elevation

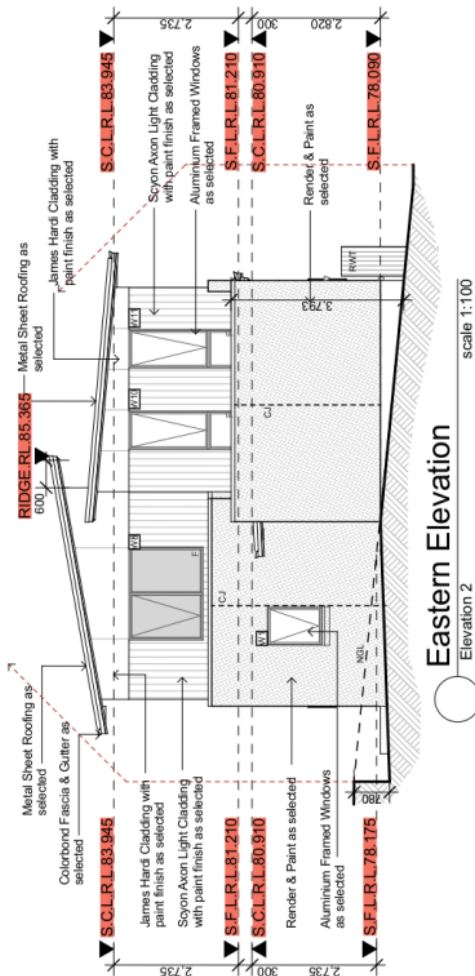
Elevation 3

scale 1:100

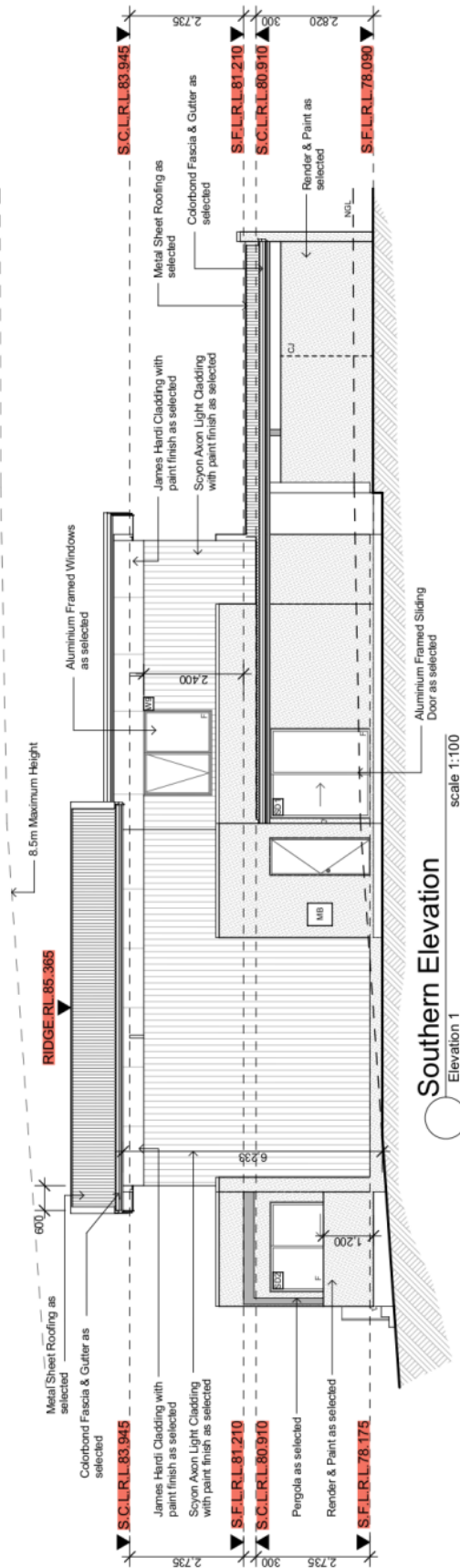
 JR Design & Drafting Residential Design & Drafting Services Phone: 081 917 4000 Fax: 081 917 4003 Email: info@jrdesignanddrafting.com.au Website: www.jrdesignanddrafting.com.au	Issue Amendment 11 Modification Lodgement	Proposed: New Two Storey Residence Location: Lot 17 DP Lot 8871, No 26 Berth Street, Wheeler Heights, NSW Client: Cecilia Elisabeth Hill	Drawing Title: House 1 Elevations CUA	Revision: 11
	Date: 03.09.20	North: 03.09.20	Design: Custom	Design: Custom
			Min Job No: MC2478	Min Job No: MC2478
			Rev Job No: MH2035	Rev Job No: MH2035



CONSTRUCTION NOTES:	
1. Figure dimensions are to be taken in preference to calling out.	
2. No allowance has been made for shrinkage or swelling.	
3. All levels shown are approximate and should be verified on site during construction.	
4. Downward sloping surfaces shall be indicated by a triangle with the slope ratio.	
5. Dimensions are to be taken from the face of the wall or the centre line of the door or window.	
6. All timber framing to be carried out to the requirements of Australian Standard (AS 1684) as a minimum.	
7. Refer to the building engineer for details of the building and its foundations.	
8. All work to be carried out in accordance with the requirements of the Building Code of Australia and the relevant local authority.	
9. All service openings, air conditioning, etc., shall be indicated by a triangle with the slope ratio.	
10. All reinforced concrete, steel beams including supports, and reinforced beams including supports, shall be indicated by a triangle with the slope ratio.	
11. Timber protection in accordance with Australian Standards.	
12. Refer to Back Certificate for energy, water & thermal requirements.	
13. All 1st floor windows with a sill height less than 1100mm to have a max opening width of 1200mm.	
14. All 1st floor windows with a sill height less than 1100mm to have a max opening width of 1200mm.	
15. All 1st floor windows with a sill height less than 1100mm to have a max opening width of 1200mm.	
16. Main Blue Gun Meter to be confirmed with Builder on site.	
17. Overlays to be confirmed with Builder on site.	



Eastern Elevation
Elevation 2
scale 1:100



Southern Elevation
Elevation 1
scale 1:100

 JR Design & Drafting Residential Design & Drafting Services Phone: 081 917 4000 Fax: 081 917 4013 Email: jrdesign@optusnet.com.au 1. All drawings are to be read in conjunction with the relevant specifications and standards. 2. All drawings are to be read in conjunction with the relevant specifications and standards. 3. All drawings are to be read in conjunction with the relevant specifications and standards. 4. All drawings are to be read in conjunction with the relevant specifications and standards.	Issue Amendment Modification Lodgement 11	Date: 03.09.20	North:	    MERIDIAN HOMES Address: Unit 45/67 Ingwood Place, Baulkham Hills, NSW, 2153 Phone: 1300 855 138 Website: www.meridianhomes.net.au	Proposed: New Two Storey Residence Location: Lot 17 DP Lot 8871, No 26 Berth Street, Wheeler Heights, NSW Client: Cecilia Elisabeth Hill	Drawing Title: House 2 Elevations CUA	Revision: 11		
	Design: Custom MC2478 MR Job No: MH2035		Finalise: Custom 03.09.20		Date: 14 of 18		Sheet: 1:100		

ITEM 3.3	DA2020/1436 - 54 MORELLA ROAD, WHALE BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Lashta Haidari
TRIM FILE REF	2020/769618
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 DA2020/1436 for alterations and additions to a dwelling house on land at Lot 196 DP 15376, 54 Morella Road, Whale Beach, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1436
Responsible Officer:	Ashley Warnest
Land to be developed (Address):	Lot 196 DP 15376, 54 Morella Road WHALE 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
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Douglas Ronald Flynn Lynne Cecily Flynn
Applicant:	Blue Sky Building Designs Pty Ltd
Application Lodged:	12/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/11/2020 to 04/12/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 18.8%
Recommendation:	Approval
Estimated Cost of Works:	\$ 150,000.00

Executive Summary

The proposal is for the construction of a lift and extension of the existing decks to provide access to the lift. The works result in a variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) of 18.8%. Despite the numeric noncompliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the adjoining or surrounding properties.

The proposed development also results in technical non-compliance with the Building Envelope control under the Pittwater 21 Development Control Plan (P21DCP). However, this non-compliance does not result in adverse amenity impacts and are consistent with the objectives of the control and are therefore supported.

The application is referred to the Development Determination Panel for determination due to the contravention of the Height of Buildings 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.

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

Development consent is sought for the alterations and additions to the existing dwelling house. The proposal includes the construction of an external lift to the north of the dwelling house and extend the existing decks to access the lift.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D12.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot 196 DP 15376 , 54 Morella Road WHALE BEACH NSW 2107
Detailed Site Description:	The subject site consists of one allotment located on the western side of Morella Road.

	<p>The site is regular in shape with a frontage of 18.1m along Morella Road and a depth of 64.77m. The site has a surveyed area of 1026m² with a slope of 46.3%.</p> <p>The site is located within the E4 Environmental Living zone and accommodates an existing two storey residential dwelling house.</p> <p>The rear of the site is heavily vegetated with a variety of vegetation located within the road reserve.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u></p> <p>Adjoining and surrounding development is characterised by similar two to three storey residential dwelling houses.</p>
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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	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration'	Comments
instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Consultancy Australia, dated 28/08/2020) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/11/2020 to 04/12/2020 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:
Mr Anthony Joseph Leo Bannon	Level 10 180 Phillip Street Sydney NSW 2000

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

- **Impact on privacy**

Comment

The proximity of the proposed lift to the adjoining dwelling at No.56 Morella Road and the

transparency of the lift shaft raises privacy concerns. It is noted that the northern face of the lift cabin is proposed to be opaque. The provision of a non-transparent section of the lift cabin will minimise direct overlooking when the lift is in use.

- **Light pollution**

Comment

The proximity of the proposed lift to the adjoining dwelling at No.56 Morella Road and the transparency of the lift shaft also raises amenity concerns in regards to light generation when the lift is in use. To address these concerns a condition of consent will be imposed for the northern and western faces of the lift cabin to be solid. This will prevent majority of the light from the lift cabin being cast to the adjoining dwelling of No. 56 Morella Road.

- **Noise generation**

Comment

The proximity of the proposed lift to the adjoining property does raise noise generation concerns. To ensure that the lift does not result in an unreasonable amenity impact a condition of consent will be imposed for the motor/lift to be acoustically treated.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following biodiversity controls:</p> <ul style="list-style-type: none"> - Pittwater LEP Clause 6.5 (Biodiversity Protection) - Pittwater DCP Clause B4.2 Flora and Fauna Conservation Cat 1 and Wildlife Corridor - Pittwater DCP Clause B4.4 Flora and Fauna Habitat Enhancement Cat 2 <p>The proposal is predominantly within the existing building footprint and will have a minimal impact on the surrounding environment. Trees that are proposed for removal are exempt varieties. The proposal complies with the relevant controls.</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>

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. A392814, dated 27/10/2020).

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

SEPP (Infrastructure) 2007

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

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

Comment

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.1m	18.8%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	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
7.6 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:	10.1m
Percentage variation to requirement:	18.8%

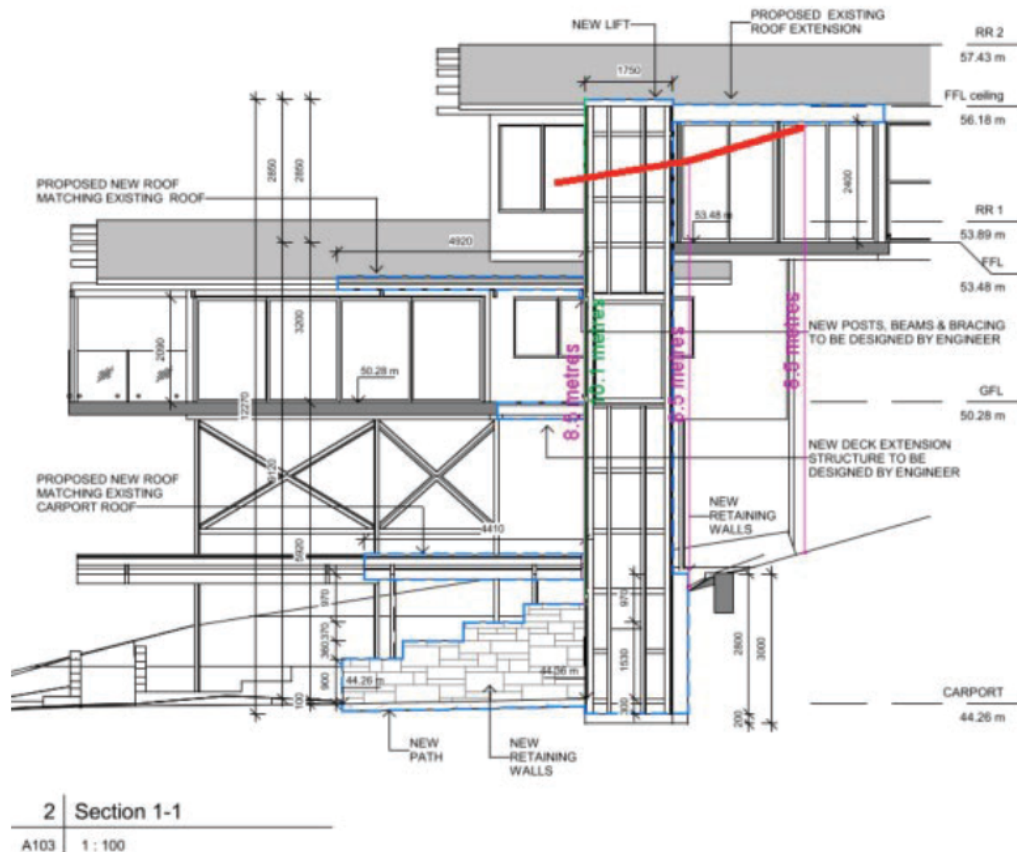


Figure 1: Height of building variation
Source: Architectural Plans, Blue Sky Building Designs

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment

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

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

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

Comment

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

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

including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The proposed lift sits below the ridge height of the existing dwelling house
- The proposal will not be visually dominant when viewed from the street
- Variation arises from the slope of the site
- The development will not result in any adverse view loss impacts
- No additional overshadowing will arise from the proposal
- Consistent scale and character with surrounding development

It is agreed that the proposed lift will sit below the ridge height of the existing dwelling house and not significantly increase the visual bulk or dominance of the structure. It is also agreed that the slope of the site and existing structure contributes to the extent of the variation. The lift is designed to connect the existing carparking area to the first floor area. The location of the proposed lift, the existing dwelling on the subject site and existing dwelling at No. 56 Morella Road the proposal will not impact on available views. The proposed lift being positioned to the north of the existing dwelling and below the existing ridge line it is agreed that there will not be additional overshadowing to adjoining sites.

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 clause 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment

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

Objectives of development standard

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

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

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

Comment

The proposed lift (RL. 56.18) does not exceed the existing ridge line of RL. 57.43. The height and scale of the dwelling is consistent with the desired character of the Palm Beach Locality. The proposal is also consistent with surrounding development.

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

Comment

The proposal will appear as a two storey structure which is consistent with surrounding development. The new lift does not seek to exceed the overall height of the existing structure.

c) to minimise any overshadowing of neighbouring properties,

Comment

The proposal will not result in overshadowing to adjoining properties.

d) to allow for the reasonable sharing of views,

Comment

The proposal will not impact on available views and vistas.

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

Comment

The existing building is stepped down the site and the proposed lift is positioned to connect the carparking area to the ground floor and first floor levels. The proposal does rely on excavation to facilitate the connection to the carparking area. The excavation is not considered to be excessive.

and will not adversely affect any significant natural features of the site.

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

Comment

The positioning of the lift, the use of transparent materials for the lift structure, and the incorporation of a light weight roof structure over the balconies minimises any adverse visual impacts of the development on the natural environment.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment

The proposed development is acceptable in terms of its impacts on the ecological and aesthetic values. There are no known special ecological, scientific or aesthetic sites of value recorded on the subject site.

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

Comment

The proposed works would not have an adverse effect on those values.

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

Comment

The proposed density and scale of the proposal is consistent with the desired outcome of the area.

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

Comment

The height and bulk of the proposed building has had regard to the adjoining development and the existing landscaping and topography within the subject site

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development

standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	10.8m	N/A	Yes
Side building line	2.5m (south)	N/A no proposed works	N/A	Yes
	1m (north)	1.5m	N/A	Yes
Building envelope	3.5m (south)	N/A no proposed works	N/A	Yes
	3.5m (north)	Outside envelope	86%	No
Landscaped area	60%	66.2%	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.25 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	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D12.8 Building envelope

The proposed lift does not comply with the building envelope requirement along the northern elevation. The extent of the variation is demonstrated below in Figure 2.

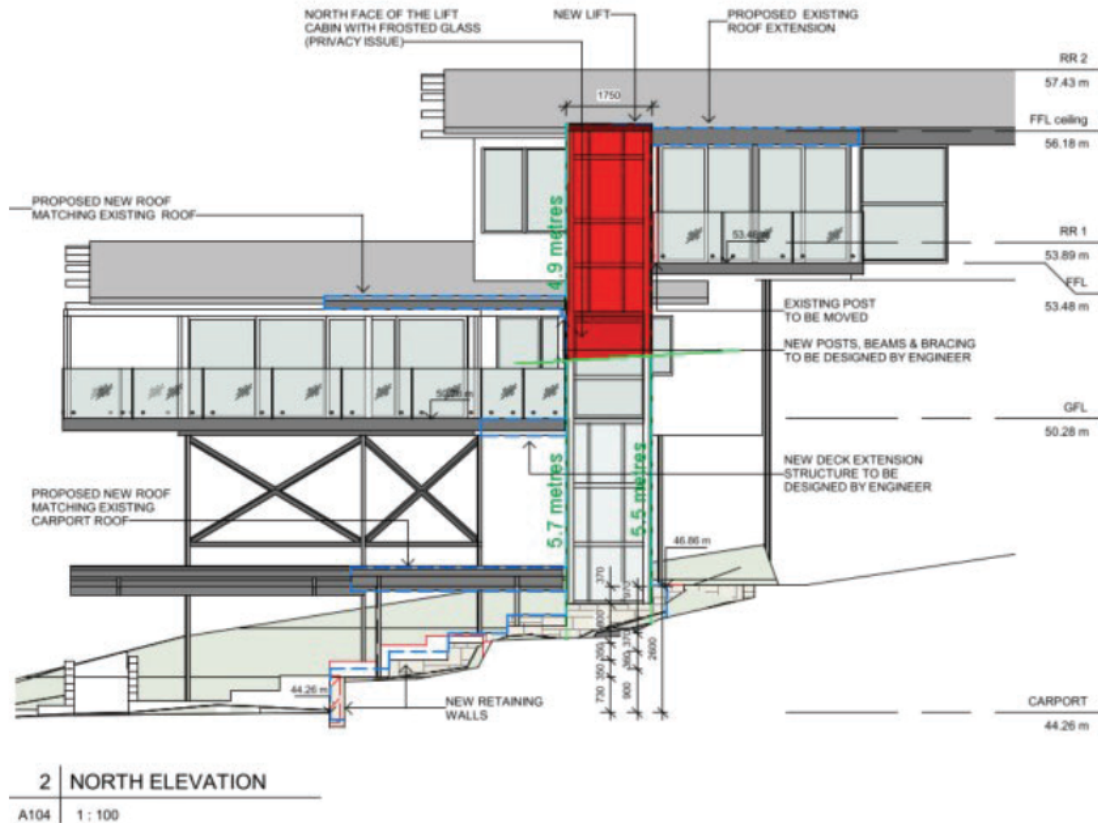


Figure 2: Building Envelope Variation
Source: Annotated Architectural Plans, Blue Sky Building Design

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 proposal will maintain the desired future character of the Palm Beach locality.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment

The proposed passenger lift and balcony roof is keeping within the maximum height of the existing dwelling. When viewed from the Morella Road the dwelling will maintain the appearance of a two storey structure. given the surrounding examples of surrounding dwellings the proposal is of a scale that is consistent with the natural environment.

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

Comment

The lift is designed to integrate with the existing dwelling to provide access to all levels. The use

of transparent materials for the lift structure and the incorporation of a light weight roof structure minimises any adverse visual impacts of the development on the natural environment. The proposed lift is situated and designed to minimise site disturbance and maintain the natural features of the site.

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

Comment

The proposal will continue to provide sufficient landscape buffers along the side boundaries, which will assist in visually breaking down the built form.

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

Comment

Views to and from private and public places will not be impacted by the proposal.

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

Comment

A reasonable level of privacy and amenity can be achieved as part of the proposal. This matter is discussed further within section C1.5 of this report.

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

Comment

The proposed trees to be removed are introduced species and would not contribute to the softening of built form. Several palms along the northern boundary are to be retained.

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 \$ 750 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 150,000.

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.

In summary, as addressed within this assessment report, the proposed development does not comply with clause 4.3 Height of Buildings under PLEP 2014 and the formal request via clause 4.6 Exceptions to development standard has been assessed and considered acceptable in this instance.

The proposal also includes variations to clause D12.8 Building Envelope of P21 DCP. This non-compliance has 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.

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 DA2020/1436 for Alterations and additions to a dwelling house on land at Lot 196 DP 15376, 54 Morella Road, WHALE 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
A101, A102, A103, and A104	26/10/2020	Blue Sky Building Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Report	28/08/2020	Bushfire Consultancy Australia
Geotechnical Report	30/09/2020	White Geotechnical Group Pty. Ltd.

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

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

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

2. Prescribed Conditions

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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.

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 \$750.00 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 \$150,000.00.

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. **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 30th September, 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.

7. **Amendments to the approved plans**

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

- a) The northern and western face of the lift cabin are to be solid and non transparent .

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the

issue of the construction certificate.

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

8. **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.

9. **Waste Management Plan**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **Road Reserve**

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

Reason: Public safety.

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

11. **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.

12. **Acoustic Treatment**

The lift is to be acoustically treated so that it does not emit any noise of 5dba 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

13. **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/>).

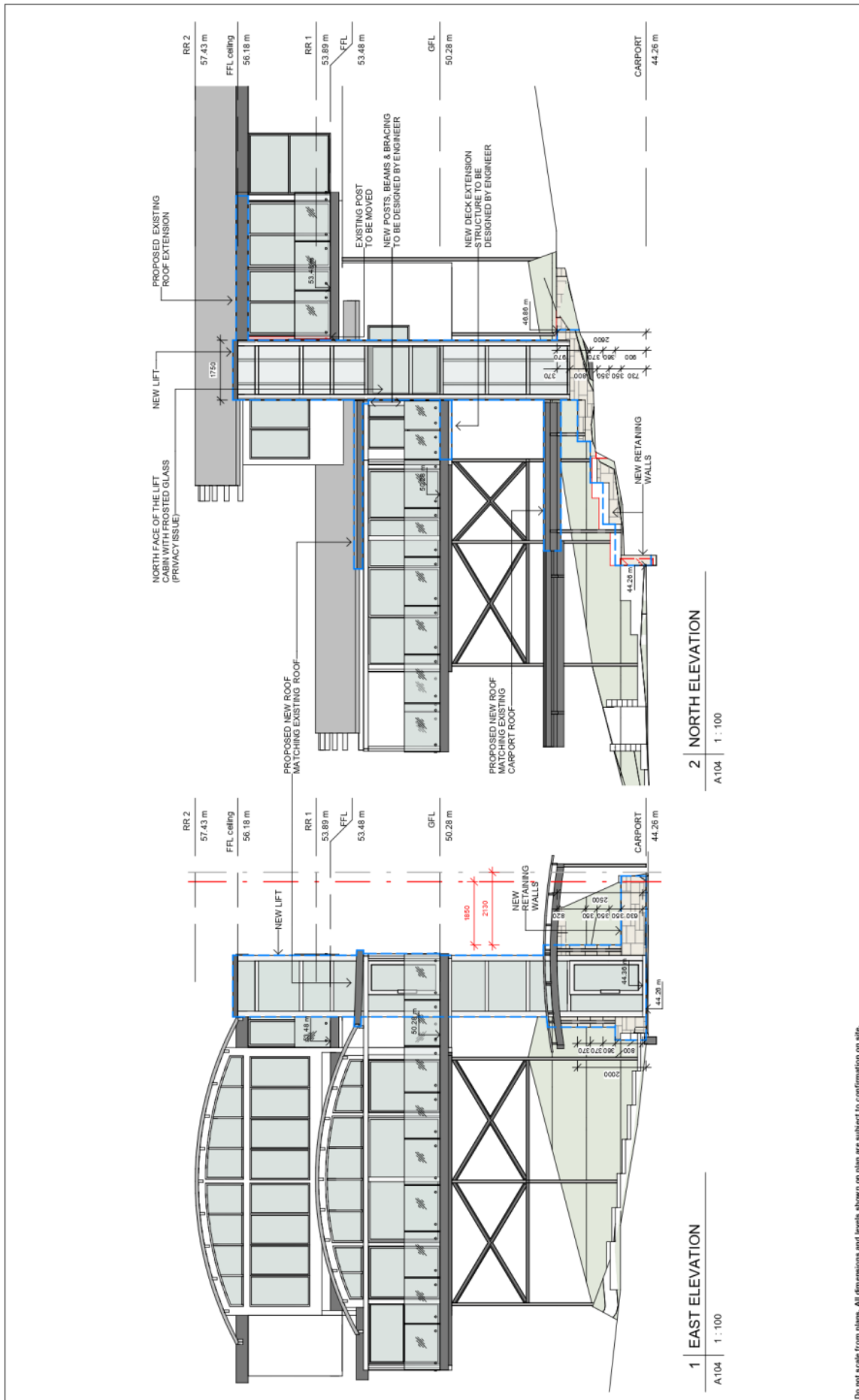
Reason: Weed management.

14. **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.





SHEET TITLE:	ELEVATIONS
SHEET NO:	A104
SCALE AS:	1:100

PROJECT TITLE:	Lift addition
PROJECT NO:	2020028
AT:	54 Morella Rd, Whale Beach
FOR:	Doug Flynn

BLUE SKY
BUILDING DESIGNS
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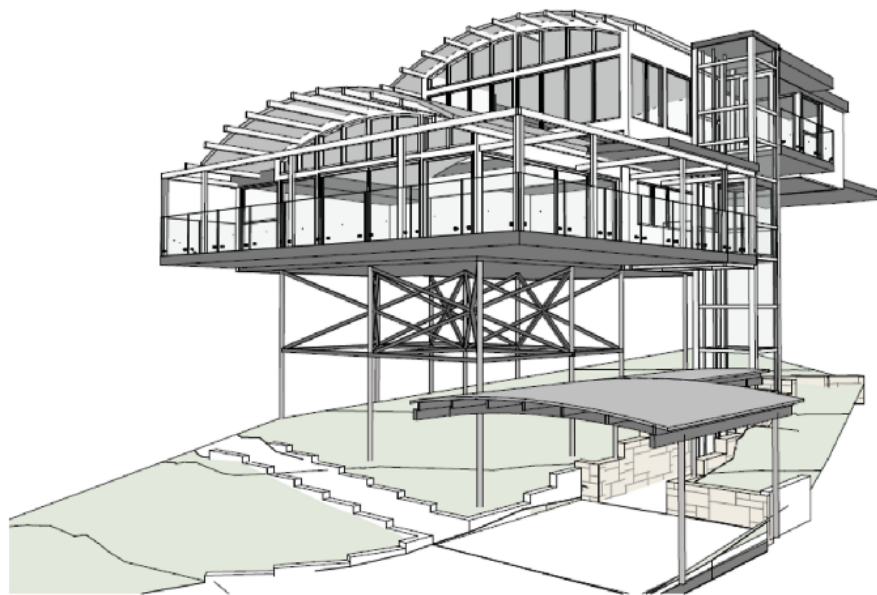
CLAUSE 4.6: EXCEPTIONS TO DEVELOPMENT STANDARDS

Maximum Height of Buildings (Clause 4.3)

Submission to Northern Beaches Council

ALTERATIONS AND ADDITIONS TO EXISTING DWELLING HOUSE

At



54 Morella Road Whale Beach

November 2020

Blue Sky Building Designs

Postal: PO Box 167 | Newport 2106

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54 Morella Road Whale Beach

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54 Morella Road Whale Beach

1 Summary

Land to be developed (Address):	Lot 196 DP 15376 54 Morella Road Whale Beach NSW 2107
Proposed Development:	Alterations and Additions to an existing dwelling house
Zoning:	E4: Environmental Living
Development Permissible:	Yes
Existing Use Rights:	Not applicable to this development
Consent Authority:	Northern Beaches Council
Applicant:	Doug Flynn

2 Introduction

The Clause 4.6: application has been prepared in support of a development application for the alteration and addition (lift addition and existing roof extension) to existing dwelling house at 54 Morella Road Whale Beach. The request seeks to vary the maximum height of buildings standard prescribed within Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP). The variation to the development standard has been prepared pursuant of Clause 4.6 of the Pittwater Local Environmental Plan 2014 (PLEP).



Arial Photograph (from SIX Maps)

3 Site details

The site is located at 54 Morella Road Whale Beach. The site has an area of 1026sqm. The site is a regular site with dimensions as follows:

- North side boundary of 62.515m
- South side boundary of 64.77m

54 Morella Road Whale Beach

- West rear boundary of 13.87m
- East front boundary of 18.985m

This residential property is on the high side of the road and has an Easterly aspect. It is located on the moderate to steeply graded middle reaches of a hillslope. The natural slope rises from the downhill property boundary to the uphill side of the house at an average angle of $\sim 14^\circ$ before increasing in grade to an angle of $\sim 25^\circ$ on the uphill side of the property.

The land is developed with a suspended floor two storey steel and timber clad house. The house is supported by steel posts and concrete piers. Suspended floor homes on sloping blocks create astonishing building silhouettes on difficult terrains and sloping sites. These architecturally designed homes maximise space and work in harmony with sloping sites for dramatic impact, achieving unique aspects and enhancing views.

Surrounding developments comprise a mix of detached residential dwellings on similar sized allotments of varying heights and scales comprising 1 storey up to 3 storeys.

4 Development standard to be varied

Clause 4.3 of PLEP controls the height of buildings. Clause 4.3(2) specifies that 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. Buildings Map prescribes that the site is within Area I in PLEP Height of Buildings Map – Sheet HOB_015. The subject site has a maximum height limit of 8.5 metres.



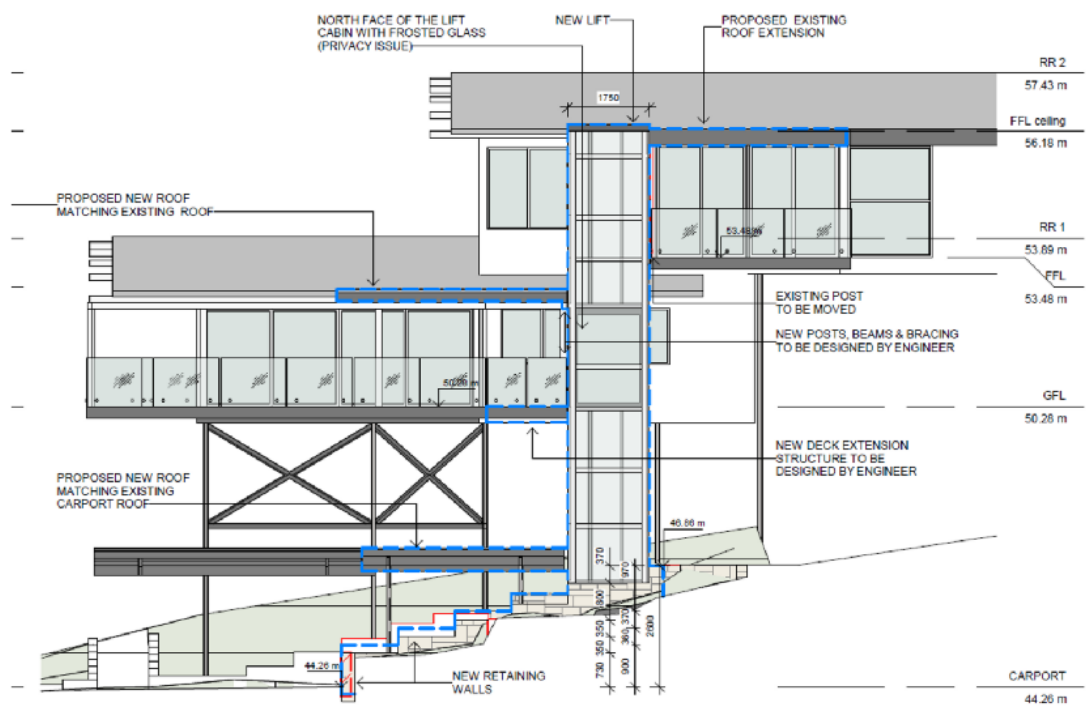
Extract from Height of Building Map (ePlanning Spatial Viewer)

54 Morella Road Whale Beach

5 Extent of variation sought to development standard

The proposal contravenes the maximum height of buildings development standard contained in Clause 4.3(2) of the PLEP. The maximum building height of the existing building is 13.17m. The proposed lift will be 11.92m in height. The variation n has been summarized in the table below:

Existing building height	13.17m
Maximum height of proposed lift	11.92 metres
Maximum Permissible height of building	8.5 m
Exceedance of the LEP development standard	3.42m (40.23%)



North Elevation Showing the Extent and Location of The Building Height Exceedance

The degree of non-compliance is only a numerical departure and the proposed lift and roof additions sits below the existing roof height; therefore, considered negligible. The Clause 4.6: Exceptions to Development Standards contends that strict compliance with the maximum building height of 8.5 metres as prescribed within Clause 4.3(2) and the maximum height of buildings at 8.5 metres is unreasonable and/or unnecessary in the circumstances of the case and that the exceedance is below the existing building height can be supported by Council in considering the merits of the proposal.

54 Morella Road Whale Beach

6 Clause 4.6 Exceptions to development standards

This variation request under Clause 4.6 of PLEP. The objectives of Clause 4.6 of PLEP are as follows:

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

Clause 4.6 allows Council to grant development consent to a development, even if it breaches the relevant development standards. However, the Council as the consent authority must be satisfied that:

- I. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3),*

Subclause 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.*

- 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*

The requirement for consideration and justification of a Clause 4.6 variation necessitates an assessment of a number of criteria. It is recognised that, it is not merely sufficient to demonstrate a minimisation of environmental harm to justify a Clause 4.6 variation, although in the circumstance of this case, the absence of any environmental impact is of considerable merit.

Accordingly, justification is set out in following assessment for the departure from the maximum building height control applicable under the PLEP. The purpose of the information provided is to demonstrate that strict compliance with the maximum building height under the PLEP is unreasonable or unnecessary in the circumstances of this particular case. It also demonstrates that there are sufficient environmental planning grounds for the departure from the maximum height controls specified in the SEPP.

54 Morella Road Whale Beach

7 Assessment

Even though the development departs from maximum height limitation, it still compliance with Clause 4.6(4)(a)(ii) Exceptions to Development Standards.

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.

7.1 The objectives of Clause 4.3: Height of Building

The objectives of the Clause 4.3 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.*

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

Even though the proposed lift departs numerical standards of the maximum building height, the proposed alterations and additions sits below roof line/maximum building height of the existing dwelling. The proposed development is not visually dominant when viewed from the street and remains compatible with surrounding developments, being a Contemporary style residential dwelling house designed to match the existing street scape.

The council has approved existing dwelling house with height departures from the permissible height.

54 Morella Road Whale Beach



Existing Dwelling When Viewed from The Street and Proposed Lift Sits Behind the Front Balcony and Will Not Be Visible from The Street

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

The proposed alteration to the existing dwelling house will continue to provide a suitable height and scale to the existing streetscape and will remain below the building height plane of the neighbouring dwellings and existing dwelling height.

The configuration and siting of the building envelope will ensure the development will maintain the front building alignments from the dwellings within the street and is appropriately stepped in response to the property frontage along Morella Road. It is also important to note that, the proposed lift sits below the existing building height and departure is limited to numerical standards. The breach to the building height is acceptable in that the development will remain compatible with the height and scale of the neighbouring dwellings within the streetscape setting.

54 Morella Road Whale Beach



The Height and Scale of The Neighbouring Dwellings

7.1.3 (c) to minimise any overshadowing of neighbouring properties

The area of non-compliance and the breach to the maximum building height will not contribute to any adverse impacts with respect to solar access. The proposed alterations and additions sit below the existing building height; therefore, the additional shadows fall within the existing shadows. Consequently, the proposed development does not change the existing solar access level.

The provided shadow diagrams confirm that the main private open space, windows to the principal living area of the proposed development and the main private open space and windows to the principal living area of any adjoining dwellings will receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

7.1.4 (d) to allow for the reasonable sharing of views

When viewed from the adjoining neighbours and street front the lift height has been sited and designed to be unnoticeable.

The development will not result in any adverse view loss impacts. The legal principle governing rights to views can be identified as far back as 1937 with the case of *Victoria Park Racing & Recreation Grounds Co Ltd v Taylor* [1937] HCA 45 (Taylor), where Justice Dixon of the High Court held 'I find difficulty in attaching any precise meaning to the phrase "property in a spectacle"'. A 'spectacle' cannot be 'owned' in any ordinary sense of that word.' In *Tenacity Consulting v Warringah Council* (2004) NSWLEC 140 (Tenacity), the Land and Environment Court established a set of planning principles on view sharing and what councils should take into account in assessing view loss impacts. Assessment of the view sharing is a four-step assessment:

54 Morella Road Whale Beach

1. *Assessment of views to be affected*

Water views are valued more highly than land views. Iconic views (eg. 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, (eg. a water view in which the interface between land and water is visible) is more valuable than one in which it is obscured.

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

Protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

3. *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; therefore. Impact should be assessed qualitatively.

4. *The reasonableness of the proposal that is causing the impact*

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.

Comments:

The immediate adjoining neighbours enjoy water views from the front of their properties. The departure from the height limitation of the proposed lift does not affect the views of the neighbours adjoins the side boundaries. Since the alterations are only on Northern side of the building, the development does not cause any impact to Southern adjoining neighbour. Rear of the dwelling adjoins Morella Reserve and the neighbours at the front of the dwelling are not impacted by the proposed development as water view of all dwellings on the low side of Morella Road is from the rear of their dwellings. The water views enjoyed by 56 Morella will not be impacted because views from the front boundary are not blocked or changed by the proposed development. Therefore, departure from the height limit does not affect views enjoyed by the neighbours in terms of the value.

54 Morella Road Whale Beach



Direction of The Water Views Enjoyed by The Neighbouring Dwellings

The second step of the principles for view sharing prescribes that 'views across side boundaries are more difficult than the protection of views from front and rear boundaries.' The proposed development will not impact the Easterly (front) view corridors of any adjoining dwellings as the proposed lift is proposed behind the established front building lines and sits below the existing building height; therefore, will preserve the existing quality of water views.

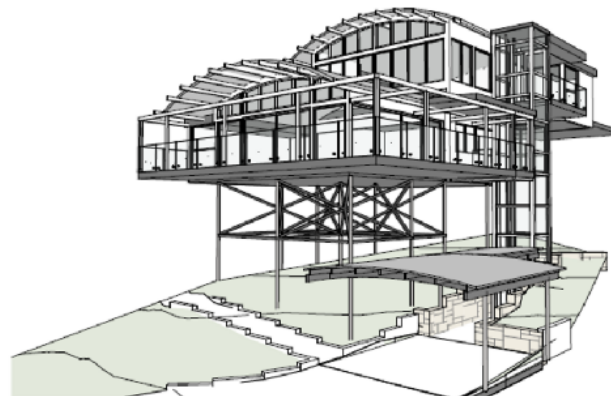
The proposal does not alter or add any windows. Building design includes appropriate measurements to assure the visual privacy of the occupants and the neighbours. To increase privacy levels of the neighbour to the North, the proposed lift includes 'frosted'/obscure glass on the north face of the lift (though not the glass structure surrounding the lift). It is also important to note that this lift will not be in constant use compared to a commercial lift. Therefore, the existing visual privacy levels of the immediate neighbour to the North of the property will be maintained. The development will not affect the adjoining neighbour to the South. There are no changes proposed to the existing main private open space area. The existing vegetation around the property creates a natural privacy screen and provides sufficient privacy to the occupants and the neighbours.

Since the proposed alterations sits below the existing building height and are proposed on the Northern façade of the dwelling, additional shadows will fall within the existing shadows. Therefore, proposed alterations do not affect the existing solar access levels enjoyed by the immediate neighbour to the North. Please refer to provided shadow diagram which confirms the above stated.

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

The existing dwelling is a prime example of a dwelling that responds sensitively to the natural topography of the land. The dwelling is built with a suspended floor minimising cut and fill at the site. Subsequently, resulted in requiring 40 stairs to access the main door with no alternative access routes. The dwelling house responds to the slope of the land behind as well as the natural environment, and installation of the lift structure has not changed this because the development only touches small area of the natural ground and sits within the already disturbed area of the site. Installation of the lift structure provides greater occupant amenity without causing material environmental impacts to neighbours or to the site itself.

The minor breach to the building height requirements is largely a result of the sloping nature of the site. The noncompliance is strictly a numerical departure and sits below the existing building height. The degree of noncompliance is acceptable given the development has been sensitively and skilfully designed to address the topography of the site. The building mass has been modelled and stepped in response to the land gradient.



Proposed and Existing Design That Responds to The Sloping Nature of The Site

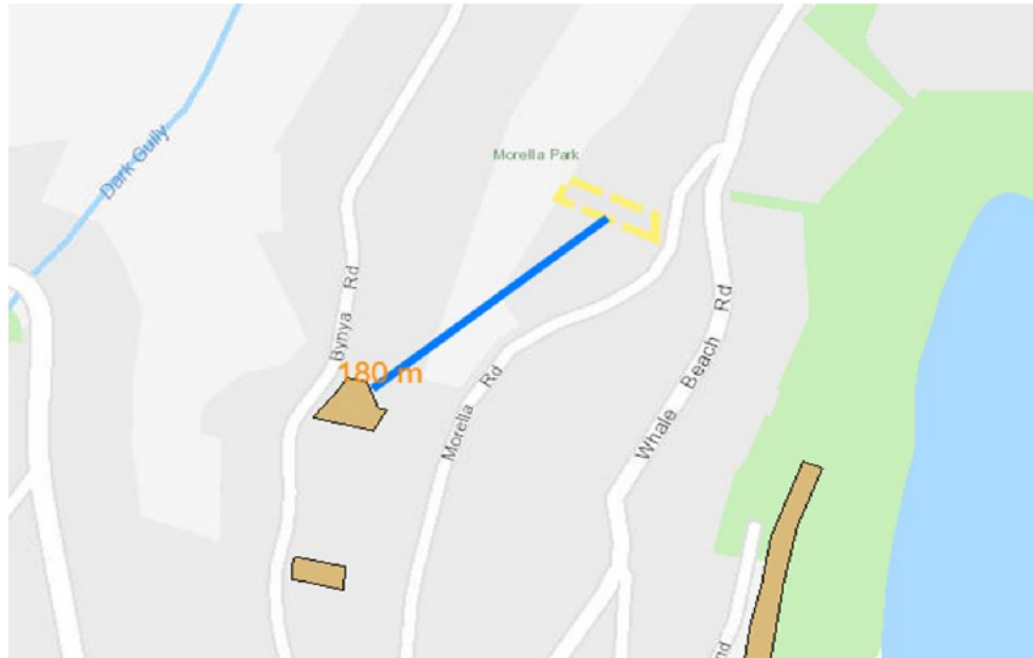
7.1.6 (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items

The height departure does not cause any impact to the natural environment and responds sensitively to the natural topography. The development only touches small area of the natural ground and sits within the already disturbed area of the site

Nearest heritage item is located at least 180m from the subject site. No visual or physical relationship exists between the heritage item and the proposal. Visual and physical separation between the proposal and heritage items are maintained by existing residential developments, landscaping and natural topography. Having regard to the matters above, it is considered

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that there will be no adverse impacts upon the fabric, curtilage or significance of the heritage item nor will the proposal impact upon views to and from the heritage item.



Extract from Heritage Map (ePlanning Spatial Viewer)

7.2 The objectives of the E4: Environmental Living Zone within the PLEP

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

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

The proposed alterations only increase 11sqm hard surface area. The existing suspended floor has caused minimum impact to the natural ground and the dwelling has allowed vegetation growth underneath the suspended floor. The rear of the site remains undisturbed with natural vegetation area. The development is limited to the Northern façade of the dwelling and remains within the already disturbed area of the site. Front of the site is disturbed by the existing residential development. Therefore, it is unlikely that development would impact any special ecological communities.

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Vegetation Underneath the Suspended Floor

7.2.2 • To ensure that residential development does not have an adverse effect on those values.

As stated above, the development only touches small area of the natural ground, and sits within the already disturbed area of the site. The rear of the site which has natural vegetation is not disturbed by the development. Therefore, proposed development does not affect the special ecological, scientific or aesthetic values.

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

The existing development is a low-density single residential dwelling house. The surrounding land use is also residential. The proposal will maintain the visual continuity and pattern of the buildings and landscape elements within the streetscape. The building mass has been modelled and stepped in response to the land gradient. The development has minimal impact on the existing environment and the retention of the lift is necessary to provide an appropriate level amenity to the occupiers of the property and to allow them to age in place, as the access to the dwelling is currently through a 40 stairs with no alternative access routes.. The current occupant of the dwelling is experiencing health issues (arthritis on knees) which challenges climbing stairs; hence the access to the dwelling has become an everyday challenge. The lift is

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not visible when viewed from the street. The development is compatible with the above objective and will be compatible with surround land uses.

7.2.4 • To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

The site not identified in foreshore building line map, wildlife corridor map nor as a riparian land. The development does not propose any fences. Fences are one of the major obstacles to fauna movement, and absence of fences makes the site wildlife friendly. The lift would only disturb a smaller area of natural ground and sits already disturbed area of the site. The rear of the site remains undisturbed in its natural form with natural vegetation. Therefore, the development will not impact, if there is any, wildlife corridors. Therefore, development does not hinder meeting the expected outcome of this objective.

7.3 Is compliance with the Development Standard unreasonable or unnecessary in the circumstances of the case?

Full compliance with the maximum height of building requirements at 8.5 metres is considered unreasonable or unnecessary in the circumstances of the case for the following reasons:

The proposed lift sits below the existing dwelling height. The noncompliance is strictly limited numerical standards. The degree of noncompliance is acceptable given the development has been sensitively and skilfully designed to address the topography of the site. Moreover, a lift is necessary development to provide access to the dwelling to the aging occupants of the dwelling.

The exceedance to the building height will not give rise to any adverse visual bulk and scale impacts from the streetscape. The additional building height will not compromise the appearance of the dwelling within the local streetscape setting. The lift will not be visually dominant when viewed from Morella Road due to the slopping topography and existing vegetation at the front. In addition to this, the proposed lift will be consistent with the existing building height plane of the streetscape.

The development will not give rise to any adverse amenity impacts to the adjoining dwellings. The Northern neighbour at 56 Morella Road and Southern neighbour at 52 Morella Road will retain the required three hours of direct solar access between 9 am and 3 pm on June 21. The frosted glass on North face of the lift will block any, if there may, directly overlook into the habitable room windows of the neighbouring dwellings when moving between floors. The development will not impact existing views looking at the front from the window openings or balconies of the neighbouring properties and the perceivable visual bulk and scale will be compatible with the siting of the neighbouring dwellings.

7.3.1 The Five Part Test (Wehbe vs. Pittwater Council (2007) NSWLEC 827

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In addressing the requirements of Clause 4.6 (3) (a), the accepted five possible approaches for determining whether compliance is unnecessary or unreasonable were established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council*. Although the *Wehbe* case was determined in respect to State Environmental Planning Policy No. 1 – Development Standards (“SEPP 1”), it is still applicable in identifying ways in which an applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case.

In the *Wehbe* case Justice Preston said the most commonly invoked way to establish that compliance with a development standard is unreasonable or unnecessary is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The five-part test outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827 is as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Comments:

Refer to Section 7.1 and sub-sections for full assessment relating to compliance with the development standard.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Comments:

Refer to Section 7.3 and sub-sections for full assessment relating to compliance with the development standard.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comments:

The underlying objective of the development standard is to ensure any new development is contextually compatible with the height and character of the immediate locality and ensuring the development does not compromise the environmental amenity of the neighbouring dwellings. The breach to the maximum building height requirements will not be visible from the existing streetscape setting. The lift will sit below the existing roof height.

Above all, the discernible breach to the building height does not compromise the amenity of the adjoining neighbours. The immediate Northern neighbours water views from the site is retained; adequate levels of visual privacy are provided. The bulk and scale of the

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development will be compatible to the form of the neighbouring buildings. Since the development sit below the existing roof height there are no additional overshadowing, and it maintains existing solar access levels.

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

Comments:

Maximum height of the existing dwelling is higher than the proposed lift and has been approved by the (former Pittwater) Northern Beaches Council. The proposed dwelling will sit within the building height plane and will remain compatible with the neighbouring buildings along the street.

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

Comments:

Not applicable. The site is zoned as E4: Environmental Living and is suitable for low-density forms of residential accommodation.

Given the above reasoning and explanations, it is our opinion that the proposal satisfies the five tests established in Wehbe and for that reason; the development standard is unreasonable and unnecessary in this instance.

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

The proposal has been carefully designed to achieve the planning objectives for the locality and to fit in with the scale and character of the surrounding development, whilst minimising potential adverse impacts on surrounding properties. The written request successfully demonstrates that there are sufficient environmental planning grounds to justify the contravention to the development standard.

8 Conclusion

In conclusion, the proposed height of the lift is considered to have negligible impacts and exhibits design excellence. The proposal is consistent with the objectives of the E4: Environmental Living Zone in that the development appropriately considers the local contextual

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nature of the neighbouring buildings and the objectives for Height of Buildings in accordance with Clause 4.3 of the Pittwater Local Environmental Plan 2014.

The proposal meets the intent of Council's Height of Building control and in accordance with Clause 4.6, demonstrates that strict compliance with the Clause 4.3 of PLEP (8.5 metre building height) is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the non-compliance. As such, the proposed variation should be supported as part of the assessment of this development application.

We have attempted the provided information in this SEE to be as accurate as possible, relying on the information provided to us to date. However, we make no claims, guarantees or promises about the accuracy, currency, or completeness of the information provided and are not responsible for any errors or omissions, or for results obtained from the use of the information. Every possible effort is made to keep the content of this document accurate and current, but that may not always be the case.