

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 24 FEBRUARY 2021



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 24 February 2021

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 10 February 2021	
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	5
3.1	REV2020/0025 - 19 Cooleena Road, Elanora Heights - Review of Determination of Application DA2019/1530 for alterations and additions to a dwelling house	5
3.2	Mod2020/0572 - 48A Queenscliff Road QUEENSCLIFF - Modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building	38
3.3	DA2020/1173 - 14 Ernest Street, Balgowlah Heights - Alterations and additions to an existing dwelling including landscape works and the construction of a swimming pool	64
3.4	DA2020/0970 - 3 Francis Street FAIRLIGHT - Alterations and additions to existing dwelling including swimming pool and carport.....	115

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 10 FEBRUARY 2021

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 10 February 2021 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	REV2020/0025 - 19 COOLEENA ROAD, ELANORA HEIGHTS - REVIEW OF DETERMINATION OF APPLICATION DA2019/1530 FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2021/099052
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 **approves** REV2020/0025 for review of Determination of Application DA2019/1530 for alterations and additions to a dwelling house on land at Lot 2 DP 17397, 19 Cooleena Road, Elanora Heights, subject to the conditions outlined in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2020/0025
Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 2 DP 17397, 19 Cooleena Road ELANORA HEIGHTS NSW 2101
Proposed Development:	Review of Determination of Application DA2019/1530 for 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:	Peter James Dougheney Nicole Rose Dougheney
Applicant:	Contour Landscape Architecture
Application Lodged:	28/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	05/08/2020 to 19/08/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 150,000.00

EXECUTIVE SUMMARY

The application seeks a review of the determination of DA2019/1530, which was refused under staff delegation on 9 March 2020. DA2019/1530 was refused in relation to the lack of information regarding flooding, overland flow and building in proximity to Council's stormwater drainage infrastructure. The applicant has now satisfied Council's concerns in relation to these previous concerns, and the application is now consistent with the relevant provisions of PLEP 2014 and P21 DCP. As such, the application is referred to the DDP with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

The application has been lodged under the provisions of section 8.3 of the EP&A Act, seeking a review of the refusal of development application DA2019/1530, which sought consent for:

- An expansion of the ground floor into an area occupied by a deck.
- A reconfiguration of the internal layout, which will move the kitchen, dining and living areas to the rear of the dwelling. Areas to the west of the dwelling that are currently occupied by living areas are to be converted into two bedrooms and storage areas.
- The existing deck is to be modified to remove structures above the easement and the construction of a new stairway on the western side of the dwelling to provide access to the rear setback (an existing stairway within the centre of the deck is to be removed as a result of the expansion of ground floor habitable areas).
- New bi-fold windows and doors on the rear elevation of the dwelling.

In response to the refusal of DA2019/1530, the applicant has provided additional information in relation to flooding and the location of Council's stormwater infrastructure. The application was also amended to remove proposed structures from within the nominated drainage easement.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)
 Pittwater 21 Development Control Plan - D5.7 Building envelope (Excluding Elanora Heights Village Centre)

SITE DESCRIPTION

Property Description:	Lot 2 DP 17397 , 19 Cooleena Road ELANORA HEIGHTS
------------------------------	---

	NSW 2101
Detailed Site Description:	<p>The subject site is identified as 19 Cooleena Road, Elanora Heights (Lot 2, DP 17397), and is located on the southern side of Cooleena Road.</p> <p>The subject site is a regularly-shaped allotment, with a frontage of 14.255 metres and a depth of 45.72 metres. The site has a surveyed area of 652.1m². The central/northern part of the allotment is moderately sloped, with an approximate 2.3 metre front-to-rear slope; areas to the rear of a large retaining wall a very steeply sloped, though the survey plan does not detail the elevation difference within this part of the site.</p> <p>The site is within an E4 Environmental Living zone sites to the front and sides of the site are all E4-zoned, while the allotment to the rear is zoned as an RE1 Public Recreation zone. The site is mapped as being flood prone, and is subject to both a geotechnical hazard and geotechnical considerations; the site is also mapped as containing class 5 acid sulphate soils. The site does not contain a heritage item, is not within a heritage conservation area and is not in close proximity to a heritage item.</p> <p>Development on the site contains a two-storey dwelling and a carport to the front of the site. The rear of the dwelling contains a large elevated deck. A large (i.e. three metre) stormwater easement containing a 1.2 metre-wide pipe also bisects the site; the pipe runs underground from approximately halfway along the western boundary before emerging below the aforementioned retaining wall within the southeast part of the site. Water discharged from this pipe then passes over a waterfall within the southeast part of the site. Areas to the rear of the site are heavily vegetated, though no significant trees are located within developed parts of the site.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u> Development on surrounding residential-zoned sites and within the locality more broadly consists of low-density residential development (i.e. dwelling houses and associated structures).</p>

Map:



SITE HISTORY

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

- 9 March 2020: Development Application DA2019/1530, for alterations and additions to the existing dwelling, was refused for the following reasons:
 1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
 2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E4 Environmental Living of the Pittwater Local Environmental Plan 2014.
 3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.3 Flood Planning of the Pittwater Local Environmental Plan 2014.
 4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3.11 Flood Prone Land of the Pittwater 21 Development Control Plan.
 5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3.13 Flood Hazard - flood Emergency Response planning of the Pittwater 21 Development Control Plan.
 6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5.12 Stormwater Drainage Systems and Natural Watercourses of the Pittwater 21 Development Control Plan.

- 28 July 2020: Subject review application lodged.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter 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</p>

Section 4.15 Matters for Consideration'	Comments
	<p>impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
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.

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 9 March 2020 and the notice of determination was issued on 9 March 2020. The review was lodged on 28 July 2020 and is to be determined within 12 months of the date of determination.

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

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 05/08/2020 to 19/08/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The review of a development application seeks approval to infill an existing timber deck, extend to create a new kitchen and reconfigure the internal layout.</p> <p>The review referral is assessed by an alternate Landscape Officer.</p> <p>Council's Landscape Referral staff have assessed the proposal against the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D5 Elanora Heights Locality <p>The site contains existing trees and vegetation to the lower slopes of the property at the rear, which is separated from built upon areas by a retaining wall. The proposed development works do not impact upon the landscape features of the site. Existing trees and vegetation within adjoining properties are not impacted upon, and conditions of consent shall be imposed to ensure protection.</p> <p>No landscape objections are provided.</p>
NECC (Bushland and Biodiversity)	<p>The proposal has been assessed against the following natural environment provisions:</p> <ul style="list-style-type: none"> - Pittwater LEP Clause 7.6 Biodiversity Protection - Pittwater DCP Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor <p>The proposal will not result in impact to native vegetation or wildlife habitat and is therefore considered to comply.</p>
NECC (Development Engineering)	<p>Development Engineer has assessed the application and cannot support it due to the following reasons.</p> <ol style="list-style-type: none"> 1. The applicant shall plot Council's stormwater pipelines and associated infrastructure to scale on the DA plans. Council's stormwater engineer will provide more details. 2. Geotechnical report shall be updated referring to the submitted master set plans. <p>DATED 5/11/2020</p> <p>I refer to Stormwater Assets Engineers comments given below:</p> <p>"Based on the stormwater survey (which I'm assuming is the</p>

Internal Referral Body	Comments
	<p><i>accurate location of the stormwater pipeline), the proposal would not be supported by the stormwater assets team based on the following reasons:</i></p> <ul style="list-style-type: none"> <i>The survey shows the centre of the 1.2m pipeline, however, should the full width of the pipeline be shown, it is expected that a section of the pipeline will be located below the existing deck and within the immediate vicinity of the deck footings. The additional roof area proposed of the existing deck would increase loads on the footings, and thusly has potential to impact Council's stormwater infrastructure; and</i> <i>Council would not support the construction/addition of new permanent structures such as the new roof over Council's Drainage Easement"</i> <p>DATED 26/11/2020</p> <p>The submitted revised plans i trim2020/742606 show that all structures existing and proposed located over and within existing Council's drainage are to be removed. No Development Engineering objection subject to conditions.</p>
NECC (Riparian Lands and Creeks)	The applicant does not propose any significant alteration of the building footprint therefore there is no additional impact to water quality or the riparian area of the creek from this application. Sediment controls are advised just in case there is any risk to the creek, which has valuable systems downstream.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The Ingleside, Elanora and Warriewood Overland Flow Study identifies that the subject site is subject to flood risk. The flood level points outlined in the Flood Risk Management Report prepared by E2 Civil and Structural Design Pty Ltd identify that the peak 1% flood level at the front of the property exceeds the existing ground floor level by approximately 200mm. However, the proposed addition complies with the requirements of Condition F4 of Clause B3.11 of the Pittwater DCP 2014. This permits a one-off addition below the Flood Planning Level of up to 30 square metres if it is an extension to an existing room. As a result the application is recommended for approval subject to conditions.
Parks, reserves, beaches, foreshore	<p>The review of a development application seeks approval to infill an existing timber deck, extend to create a new kitchen and reconfigure the internal layout.</p> <p>The review referral is assessed by an alternate Parks Assets Officer.</p> <p>Council's Parks Referral staff have assessed the proposal against the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B8.2 Construction and Demolition - Erosion and Sediment Management

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • D5 Elanora Heights Locality <p>The site adjoins Eungai Place Reserve located downslope, and as such surface sediment runoff and/or erosion is to be controlled, managed and contained from entering the Reserve.</p> <p>Subject to this requirement that satisfies clause B8.2, Parks Referral has no objections to the proposal, with conditions of consent to be imposed to ensure surface sediment runoff and/or erosion is controlled, managed and contained from entering the Reserve.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</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. A367252_03, dated 3 February 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	5.04m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Unchanged		N/A
Rear building line	6.5m	25.72m	N/A	Yes
Side building line	2.5m - west	1.5m (existing 1.5m minimum setback unchanged)		No
	1m - east	1.4m (existing 900mm minimum setback unchanged)		No
Building envelope	3.5m - west	Within envelope	N/A	Yes
	3.5m - east	Outside envelope		No
Landscaped area	60%	63.3% (413.3m 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
A4.5 Elanora Heights 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
B3.11 Flood Prone Land	Yes	Yes
B3.13 Flood Hazard - Flood Emergency Response planning	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	N/A	N/A
B6.2 Internal Driveways	N/A	N/A
B6.3 Off-Street Vehicle Parking Requirements	N/A	N/A
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	N/A	N/A
B8.6 Construction and Demolition - Traffic Management Plan	N/A	N/A
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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	N/A	N/A
D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.2 Scenic protection - General	Yes	Yes
D5.3 Building colours and materials (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.5 Front building line (Excluding Elanora Heights Village Centre)	N/A	N/A
D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)	No	Yes
D5.7 Building envelope (Excluding Elanora Heights Village Centre)	No	Yes
D5.9 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D5.13 Construction, Retaining walls, terracing and undercroft areas (Excluding Elanora Heights Village Centre)	N/A	N/A

Detailed Assessment

C1.5 Visual Privacy

The proposed changes to the western side of the deck will result in the size of the deck being reduced in this location. While the side-access stairway will be moved closer to the side boundary (with a minimum setback distance of 1.5 metres), this stairway is to be used for movement between the ground floor of the dwelling and the rear setback area and is therefore unlikely to result in frequent overlooking of the adjoining site at 21 Cooleena Road (noting that the layout of that site situates the dwelling towards the rear of the allotment; the stairway will therefore overlook the front setback area). As such, no privacy mitigation measures are recommended, noting that the stepped design of the deck will likely prevent the establishment of sufficient screens in this area.

While the location of the southwest section deck will not be altered, the additions to the dwelling within the southwest corner (i.e. a roof above the deck and conversion of the current adjoining bedroom to the main living area) will likely promote greater use of this area and subsequent instances of overlooking of the adjoining site to the east (i.e. 17 Cooleena Road). As such, it is recommended that a privacy screen with a minimum height of at least 1.7 metres from the deck's floor level be installed on the eastern side of the deck; such a measure will be consistent with existing measures, noting that there is already a trellis screen situated in this location.

D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)

The proposed rear setback complies with DCP requirements, and as such will not be discussed further.

The eastern setback of the deck will be greater than 1 metre from the boundary and will not be discussed further. The additions to the southwest side of the dwelling are technically noncompliant as they will be less than 2.5 metres from the western boundary; the stairs to the western setback will be a minimum 1.5 metres from the side boundary, while the section of the deck to the rear of the new kitchen will be a minimum 2.3 metres from the boundary. The existing minimum 1.5 metre side setback will be retained.

The proposed additions within this part of the site will not adversely nor unreasonably affect views, visual privacy (refer to the separate assessment above) and solar access. As such, the side setbacks of the proposed deck will satisfy the objectives of the control and are therefore considered to be satisfactory and supportable on merit.

D5.7 Building envelope (Excluding Elanora Heights Village Centre)

Due to the slope of the site, a small section of the roof above the southeast corner of the balcony will breach the building envelope by a maximum approximate height of 250mm. Given the size and location of the breach, the noncompliance will not result in adverse and unreasonable impacts on views and solar access. Further, as the noncompliance is caused by the roof and not the existing deck the breach will have no impact on visual privacy. As such, the objectives of the controls will be satisfied and the proposed variation acceptable and supportable on merit.

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

Additional information and amended plans have been provided in response to the previous refusal of the proposal, and Council's previous concerns have now been addressed. The panel can be satisfied that the application is consistent with the provisions of s.8.3 of the EP&A Act and the objectives of PLEP 2014 and P21 DCP, such that the proposal can now be supported. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2020/0025 for Review of Determination of Application DA2019/1530 for alterations and additions to a dwelling house on land at Lot 2 DP 17397, 19 Cooleena Road, ELANORA HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Building materials, sedimentation**

No building materials or other materials are to be placed on or enter areas of bushland, wetland, saltmarsh, seagrass or foreshore vegetation.

Reason: Environmental Protection

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 Plan C5, revision C	26 November	Contour Landscape

	2020	Architecture
Proposed Ground Floor Plan C7, revision E	26 November 2020	Contour Landscape Architecture
Proposed Roof Plan C8, revision C	26 November 2020	Contour Landscape Architecture
Proposed Elevation 1 C9, revision C	26 November 2020	Contour Landscape Architecture
Proposed Elevation 2 C10, revision C	26 November 2020	Contour Landscape Architecture
Proposed Elevation 3 C11, revision C	26 November 2020	Contour Landscape Architecture
Section AA C12, revision C	26 November 2020	Contour Landscape Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate A367252_02	16 October 2020	Contour Landscape Architecture
Geotechnical Risk Management Report, reference AG19226	4 December 2019	Ascent Geotechnical Consulting

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	10 December 2019	Contour Landscape Architecture

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. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a 'dwelling house'.

A 'dwelling house' is defined as:

"A building containing only one dwelling."

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

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

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 sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local

Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. 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.

7. 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.

8. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$7600.00 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

9. **Stormwater Disposal**

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

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

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

10. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by ASCENT geotechnical consulting dated 12 October 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.

11. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's Water Management for Development Policy. Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure

12. Amendments to the approved plans

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

- A privacy screen is to be installed on the western elevation of the rear deck. The screen is consist of a solid surface or fixed louvres which direct views away from the dwelling at 17 Cooleena Road (i.e. the site adjoining the common eastern boundary). The height of the screen is to be at least 1.7 metres above the floor level of the deck. The screen is to be constructed of materials and colours that are consistent with the remainder of the dwelling.

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.

13. 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.

14. Flooding

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

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Flood Planning Level of 51.12m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 51.12m AHD.

Storage of Goods – D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

15. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.1>

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

16. **Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

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

17. **Compliance with Standards**

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

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

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

18. **External Finishes to Roof**

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

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

19. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Installation and Maintenance of Sediment and Erosion Control**

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area, in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

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.

21. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Contour Landscape Architecture prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

The discharge of sediment-laden waters from the site may result in clean-up orders and/or fines under Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

Reason: Protection of the receiving environment

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

22. **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.

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

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

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

24. **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.

25. **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.

26. **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.

27. **Tree and vegetation protection**

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of 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.

The Certifying Authority must ensure that:

- c) 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

28. **Stormwater Disposal**

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

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

29. **Post-Construction Council's Stormwater Assets Dilapidation Survey)**

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post construction dilapidation report must be submitted to the Council for review and the Certifying Authority prior to the issue of the Occupation Certificate. Any damaged to Council's stormwater infrastructure is to be rectified in accordance with Council's technical specifications prior to the release of the security bond.

Reason: Protection of Council's Infrastructure

30. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**
All structures have been located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline have been designed and constructed in accordance with Northern Beaches Council's "Water Management for Development Policy". Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted).

Structural Certification prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

32. **Retention of Natural Features**
All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To ensure the retention of natural features.

33. **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.

34. **Works to cease if item found**
If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

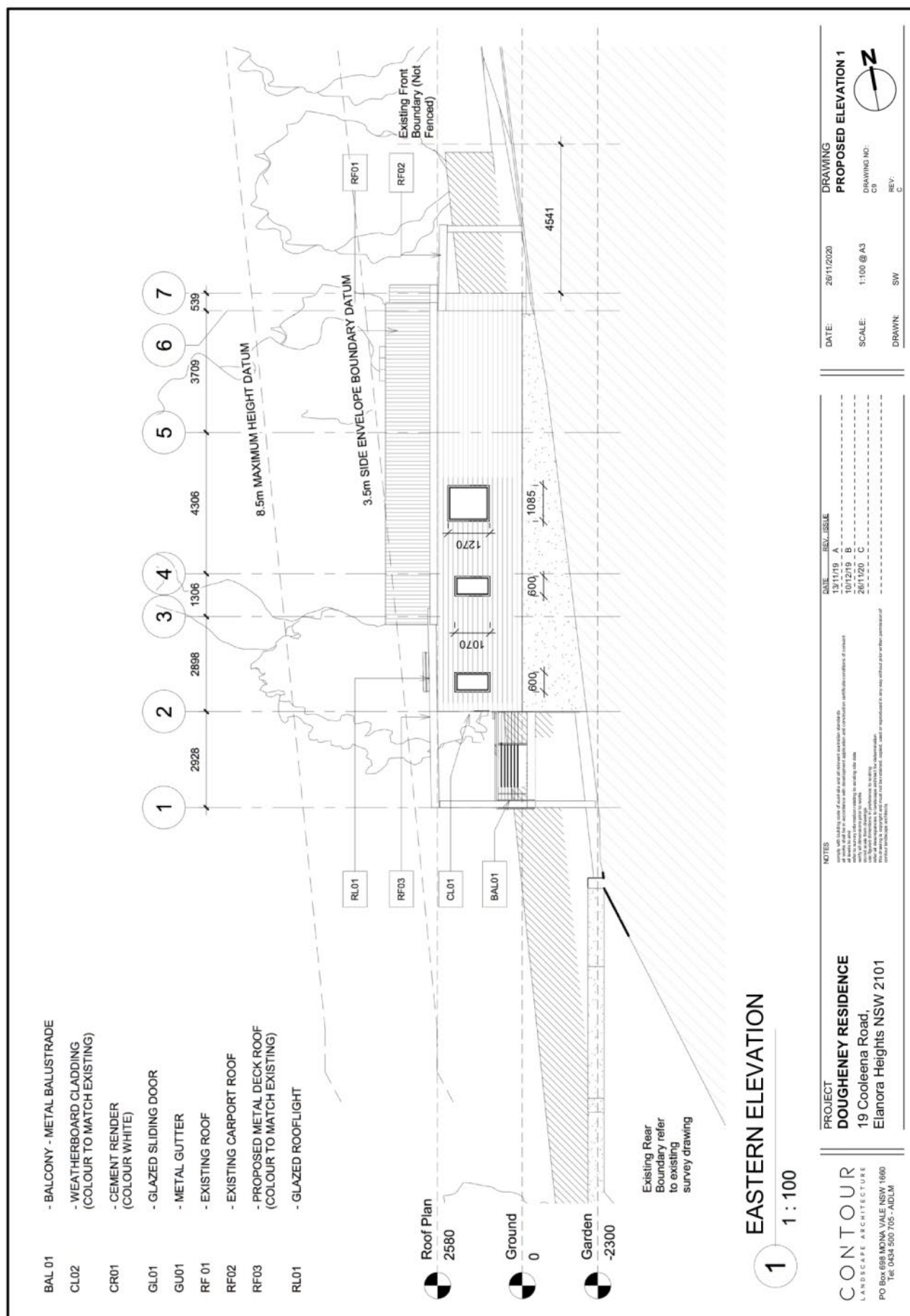
Reason: To protect Aboriginal Heritage.

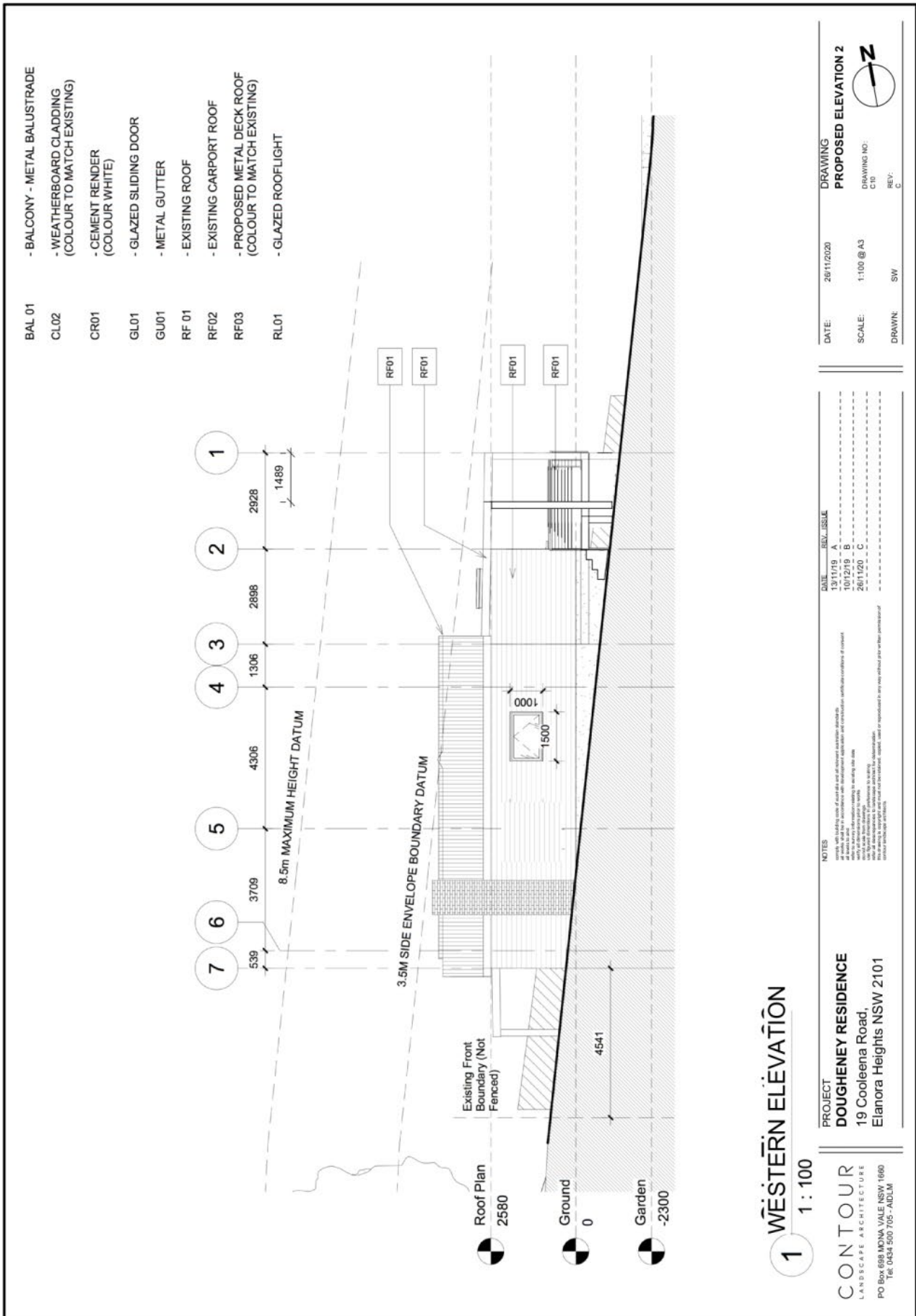
35. **Dead or Injured Wildlife**
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

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









ITEM 3.2

**MOD2020/0572 - 48A QUEENSCLIFF ROAD QUEENSCLIFF -
MODIFICATION OF DEVELOPMENT CONSENT DA2011/0360
GRANTED FOR ALTERATIONS AND ADDITIONS TO A
RESIDENTIAL FLAT BUILDING**

REPORTING MANAGER **Rod Piggott**

TRIM FILE REF **2021/098688**

ATTACHMENTS

1 Assessment Report

2 Site Plans & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Mod2020/0572 for Modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building on land at Lot CP SP 4129, 48A Queenscliff Road Queenscliff, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0572
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot CP SP 4129, 48 A Queenscliff Road QUEENSCLIFF NSW 2096
Proposed Development:	Modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	The Owners of Strata Plan 4129
Applicant:	C & C Project Management Pty Ltd
Application Lodged:	03/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/11/2020 to 27/11/2020
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal is for modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building, determined by the former Warringah Development Application Panel on 12/09/2011. The development consent has been modified three times since the original approval.

The proposed modification involves the legitimisation of an as-built tiered landscaped terrace area at the southwest side of the building with planting and mechanical ventilation exhaust stack on the northern side of the building above the basement parking area, the removal of a pedestrian path along the southern portion of the western boundary and changes to the fire sprinkler system.

The application has received three (3) objections from neighbouring residents raising concerns relating to inconsistencies with the expected outcomes of the development consent approved by the Warringah Development Application Panel, including privacy, solar access and view impacts.

The assessment of the application has found that the proposal is appropriate for the site and does not result in any unreasonable amenity impact to adjacent properties.

As such, the application is recommended for approval, subject to a condition requiring the deletion of a proposed tree that may cause unreasonable view loss.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify development consent DA2011/0360 granted for alterations and additions to a Residential Flat Building. The proposed modifications involve the following:

1. Removal of the side path along the western boundary
2. Retrospective approval for the as-built terraced garden beds adjacent to the western boundary
3. Upgraded ventilation stack to Building Code of Australia requirements
4. Change in fire safety requirements to replace FER r3 (fire curtain system) with FER r4 (sprinkler system)

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 Development Control Plan - D3 Noise
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot CP SP 4129 , 48 A Queenscliff Road QUEENSCLIFF NSW 2096

Detailed Site Description:

The site is located within the R2 Low Density Residential zone and accommodates an 11-storey residential flat building containing 15 units and basement carparking.

The subject site is located on the southern side of Queenscliff Road.

The site is battle-axe in shape with a frontage of 4.8m along Queenscliff Road and a depth of between 41.375m and 88.91m. The site has a surveyed area of 1,081m².

The subject site contains a steep slope which has a diagonal fall of approx. 21m (18%) in a north to south direction (from Queenscliff Road) towards Queenscliff Beach.

Existing Landscaped open space on site is characterised by areas of rock outcrops within the northeastern portion of the site and poor quality shrubs, medium size trees ground cover and weeds within the rear (southern) portion of the site. The site has been subject to substantial cut and fill in the past. Vehicular access to the site is provided by a steep driveway from Queenscliff Road.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by apartment style housing to the north-west, west, south-west, west and north-east. These apartment style buildings vary in scale between two and five stories in scale. A one-storey dwelling house occupies the site to the north, No. 44 Queenscliff Road. The southern boundary of the site adjoins a landscaped reserve which adjoins Queenscliff Beach.

Map:



SITE HISTORY

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

DA2011/0360 (the application being modified under this current application) was approved by Warringah Development Assessment Panel (WDAP) on 16 September 2011. It approved the construction of 2 new units including an undercroft, 2 bedroom, unit (unit 17 in the current application) and lower ground level split level, 4 bedroom, unit (unit 18 in the current application). It also involved alterations and additions to the parking areas and excavation works within the northern setback area of the site to construct 3 levels of parking, including 6 mechanical car stacking spaces and 2 visitor spaces. This resulted in an overall increase in parking of 11 spaces, from 16 to 27 spaces.

MOD2012/0262 was approved by WDAP on 8 May 2013. It gave approval to various modifications to the approved plans of DA2011/0360, including an additional car space (now 28 total spaces, an increase of 12 over the existing building), and deletion of 1 bedroom.

DA2013/0333 was approved under delegation on 19 July 2013. It gave approval to alterations and additions to apartments 1, 3 and 5 in the building. These apartments are not the subject of this current application.

MOD2016/0077 was approved under delegation on 26 July 2016. It gave approval to various modifications of DA2011/0360 including a total of 22 total car spaces (6 additional spaces compared to existing building).

DA2018/1273 was approved under delegation on 29 August 2018. It gave approval to the strata subdivision of the two additional units. It allocated 2 car spaces to apartment 17, and one car space to apartment 18. Modification of this DA is not the subject of this report.

Mod2018/0611 was approved under delegation on 28 February 2019. It gave approval to various modifications of DA2011/0360, including changes to the floor plans and doors and windows on the approved plans for proposed apartments 17 and 18.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2011/0360, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The changes relate to landscaping alterations and the provision of a mechanical ventilation outlet required for BCA compliance. • The approved use of the development will not be changed by the proposal. • The external appearance of the building will be largely unchanged by the proposed modifications. • Despite the proposed modifications, the appearance of the building will be largely unchanged when viewed from surrounding sites and the public domain.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent	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 DA2011/0360 for the following reasons:

Section 4.55(1A) - Other Modifications	Comments
as originally granted was modified (if at all), and	<ul style="list-style-type: none"> The external appearance of the building will be largely unchanged by the proposed modifications. Despite the proposed modifications, the appearance of the building will be largely unchanged when viewed from surrounding sites and the public domain. The proposed changes will not change the use of the development. The modifications will not result in additional impacts on surrounding sites and the public domain.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control 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.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the

Section 4.15 'Matters for Consideration'	Comments
	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 applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a geotechnical report.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This 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	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the</p>

Section 4.15 'Matters for Consideration'	Comments
on the natural and built environment and social and economic impacts in the locality	Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

Comment:

Existing Use Rights for the purpose of a Residential Flat Building in the R2 Low Density Residential zone were established in the assessment of the original development application.

- What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the *Environmental Planning and Assessment Regulation 2000* ("the Regulation")?

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the

rule to be applied as follows: *"if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose"*.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed modification does not alter the built form of the existing residential flat building, apart from the provision of a new mechanical ventilation outlet structure on the northern side of the building. This structure is centrally located within the site and is of a minor scale relative to the residential flat building.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The existing building is not proposed to be demolished. The proposal is for minor modifications to an existing approval for alterations and additions.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in

adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed modifications will not result in any significant or unreasonable impacts on adjoining land, as assessed throughout this report.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

There is no adverse impact on the internal amenity of the proposal.

Conclusion

The use has been approved under a previous environmental planning instrument (County of Cumberland Planning Scheme Ordinance, 27 June 1951) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (WLEP 2011).

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 13/11/2020 to 27/11/2020 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:
Mrs Michaele Rose Somerville	54 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Stephen Bruce Simpson	17 Curl Curl Parade CURL CURL NSW 2096
Mrs Virginia Paige Mounsey	8 Glen Street FRESHWATER NSW 2096
C & C Project Management Pty Ltd	25 Everview Avenue MOSMAN NSW 2088
Mr Trevor Milton Collins	4 / 48 A Queenscliff Road QUEENSCLIFF NSW 2096

Three (3) of the submissions received are from neighbouring residents and two (2) are responses to the submissions by the applicant.

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

- Inconsistency with intended outcomes of previously approved development
- Impact of ventilation outlet

The matters raised within the submissions are addressed as follows:

- *Concern is raised that the proposed modification is inconsistent with the intended outcomes of the original approval, specifically the requirement to remove the proposed landscaped terracing between the building and the western boundary adjacent to No. 1A Greycliffe Street.*

Comment:

It is acknowledged that the approval of DA2011/0360 by WDAP required the removal of the proposed landscaped terraces on the western side of the building due to its potential view and amenity impacts to adjacent properties.

The applicant is seeking consent to legitimise the as-built terraces that were otherwise required to be removed under the conditions of consent for DA2011/0360. The NSW Land and Environment Court via *“Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240”* has held that development consents can be modified to grant consent retrospectively to works that have already been carried out.

Based on an assessment of the merits of the proposed modification, it is considered the as-built terraces and proposed landscaping do not fundamentally diverge from the decision of WDAP. While this modification includes landscaped terraces, the scale of the terraces and the proposed landscaping is substantially reduced. The maximum height of vegetation proposed on the lowest terrace is 1.5m. Most of the vegetation proposed on the middle and upper terraces are between 0.1m and 1m high. One 4m tree is proposed on the middle terrace, adjacent to the building. To ensure no view corridors are unreasonably impacted, a condition is included to delete the tree from the proposal. This will also ensure that the intended outcomes of the WDAP decision are upheld.

The provision of the terraces is not expected to unreasonably impact upon the privacy and amenity of adjacent dwellings. The area is not readily accessible by residents of the site and is expected to be occupied for short times during periodic landscaping maintenance. The terraces do not cause any additional solar access impacts as the shadow of the residential flat building subsumes any shadow cast by the terraces.

As such, subject to condition, the proposed terraces and landscaping is considered acceptable and in-keeping with the intended outcomes of the original development consent.

- *Concern is raised regarding the mechanical ventilation outlet on the northern side of the building and its view impact to nearby dwellings.*

Comment:

The mechanical ventilation outlet on the northern side of the building is a requirement under the Building Code of Australia. Due to the limited scale of the outlet structure and the built form of existing development in the locality, its impact in terms of amenity, view loss and solar access are considered reasonable in the locality context. As established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*, it is often unrealistic to expect the retention of view

corridors across side boundaries.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The modification application includes alterations to the landscape works including the removal of the western boundary path and replacement with terrace walling, ground boulders and planting.</p> <p>In review of the impact to neighbouring properties from the proposed works, it is considered that the terraced garden area within the south-western area will not impact the views of neighbours as all the planting is of low height, with the exception of the proposed Frangipani. Conditions of consent shall be imposed to deleted the Frangipani from the landscape works.</p>
NECC (Coast and Catchments)	<p>State Environmental Policy (Coastal Management) 2018.</p> <p>The proposal is supported for approval without condition.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018. Hence, Clauses 13, 14 and 15 State Environmental Policy (Coastal Management) 2018 apply for this DA.</p> <p>On internal assessment the proposed modification satisfies the requirements under State Environmental Policy (Coastal Management) 2018.</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 65 - Design Quality of Residential Apartment Development

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

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

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

The proposed development, as modified, does not generally alter or create any changes to the previous assessment of the original (and modified) development application which was found to satisfy the requirements of the 10 Design Quality Principles contained in Clauses 9-18 of SEPP 65 and the matters contained in the (superseded) Residential Flat Design Code (RFDC) and Apartment Design Guide.

As per the definition of a residential flat building and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

SEPP (Coastal Management) 2018

Refer to Coast & Catchments referral comments for CM SEPP consideration.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
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	Existing 11 storey building	Unaltered	N/A	Yes

Compliance Assessment

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

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	11 storey RFB	Unaltered	As approved
B3 Side Boundary Envelope	E - 5m	Within envelope	Unaltered	Yes
	W - 5m	Within envelope	Unaltered	Yes
B5 Side Boundary Setbacks	E - 0.9m	Building: Nil to 4.5m	Unaltered	As approved
		-	Ventilation outlet: 7.3m	Yes
	W - 0.9m	Building: 0.9m to 3.9m	Unaltered	Yes
		-	Ventilation outlet: 9.5m	Yes
		-	Landscaped terrace: 0.9m	Yes
	N - 0.9m	Building: Nil to 3.5m	Unaltered	As approved
		-	Ventilation outlet: 2.2m	Yes
B7 Front Boundary Setbacks	6.5m	45.0m	Unaltered	Yes
B9 Rear Boundary Setbacks	6m	Building: 4.1m to 6.4m	Unaltered	As approved
		Balconies: 2.1m to 4.4m	Unaltered	As approved
		-	Landscaped terrace: 4.1m	No, similar to approved
D1 Landscaped Open Space and Bushland Setting	40%	18.9% (204m ²)	Unaltered	As approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3 Side Boundary Envelope	Yes	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
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
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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D3 Noise

The proposed development includes a water feature on the upper terrace. In light of submissions received, the potential acoustic impact of the water feature is considered below.

Merit consideration

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

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

Comment:

The proposed development demonstrates appropriate design solutions to improve the urban environment by providing an attractive landscaped outlook for the site and adjoining properties.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The submitted plans indicate the proposed water feature is to be static, thereby not causing any unreasonable acoustic impact to adjacent residences.

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

D7 Views

Merit consideration

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

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

Comment:

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 view corridor that has the potential to be impacted by the proposed development is one enjoyed of Queenscliff and Manly beaches towards the south. The extent of the view is restricted to a narrow corridor between the existing buildings at 1A Greycliffe Street and 48A Queenscliff Road.

The image below indicates the approximate view corridor described above.



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

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

Comment to Principle 2:

The potential for greatest view impact of the proposed development is from the south facing balconies of units in the residential flat building at 1 Greycliffe Street across the rear boundary with 1A Greycliffe Street and the side boundary with 48A Queenscliff Road.

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:

It is expected that the proposed development will have minimal impact to the view corridor as most of the proposed vegetation on the terraces are low-lying. The majority of the proposed vegetation have a mature height of between 0.1m and 1.5m. The taller plants are located on the lowest terrace, which negates their impact on the view corridor.

The exception to this is the potential impact caused by the proposed Frangipani tree to be located on the middle terrace. The mature height of this tree is expected to be 4m, which has the greatest view impact potential. While the submitted landscape plan indicates there to be no impact on the view corridor enjoyed by the units at 1 Greycliffe Street, Council is not satisfied there will be no view impact. As such, a condition is included to require the deletion of the Frangipani tree.

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:

Subject to condition, the proposed development is not expected to have an unreasonable impact on any existing view corridors. The development is generally compliant with the relevant built form controls and incorporates a more desirable landscaping outcome for the site.

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

Comment:

The design of the proposed development is considered appropriate for the site and to improve the urban environment.

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

Comment:

No canopy trees are located within the view corridor.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

In summary, the proposed development relates to a landscaped portion of the site that was required to be revised by the Warringah Development Application Panel under the original development consent. Works relating to this portion of the site have been undertaken that are inconsistent with the development consent. The application seeks to legitimatise the as-built works and provide a revised landscaping solution for the area.

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.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0572 for Modification of Development Consent DA2011/0360 granted for alterations and additions to a Residential Flat Building on land at Lot CP SP 4129,48 A Queenscliff Road, QUEENSCLIFF, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-002 Rev B	28/10/2020	Custance
DA-003 Rev C	28/10/2020	Custance
DA-007 Rev B	28/10/2020	Custance
DA-008 Rev B	28/10/2020	Custance
DA-009 Rev B	28/10/2020	Custance
DA-010 Rev B	28/10/2020	Custance

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Fire Engineering Report Peer Review (Ref: 17084-R1-V2)	22/11/2019	Peter Gardner & Associates
Geotechnical Assessment (Ref: 2010-198)	January 2021	Crozier Geotechnical Consultants

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-100 Rev C	26/10/2020	Space Landscape 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.

B. Add Condition No. 22E - Landscape works completion to read as follows:

Landscaping is to be implemented in accordance with the approved Landscape Plan DA-100, revision C, prepared by Space Landscape Designs, inclusive of the following conditions:

i) the proposed Frangipani - *Plumeria acutifolia* shall be deleted from the works.

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.









ITEM 3.3 **DA2020/1173 - 14 ERNEST STREET, BALGOWLAH HEIGHTS -
ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING
INCLUDING LANDSCAPE WORKS AND THE CONSTRUCTION
OF A SWIMMING POOL**

REPORTING MANAGER Rod Piggott
TRIM FILE REF 2021/099026
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 **approves** Development Consent to DA2020/1173 for alterations and additions to an existing dwelling including landscape works and the construction of a swimming pool on land at Lot 15A DP 31138, 14 Ernest Street, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1173
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 15A DP 31138, 14 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to an existing dwelling including landscape works and the construction of a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	James William Barchard Martin Kathryn Ann Martin
Applicant:	James William Barchard Martin
Application Lodged:	22/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/09/2020 to 13/10/2020
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.3 Height of buildings: 2.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,023,000.00

EXECUTIVE SUMMARY

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

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

The applicant has lodged a request under Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) for a variation to the development standard for height of building. The height variation is up to a maximum of 8.709m above the allowable height of 8.5m, representing a maximum variation of

2.5%.

The existing FSR is 0:16:1 (142.2sqm) and the proposal has a total gross floor area of FSR 0.34:1 (295sqm) including the former single garage which is proposed to be utilised for storage, representing compliance with the Floor Space Ratio development standard of 0.45:1 (393.9sqm) under the MLEP.

Council received six (6) submissions objecting to the proposal in response to the application. The issues raised in the submissions have been addressed in the "Public Notification" section of this report and in summary they do not warrant refusal or re-design of the proposal subject to suitable conditions have been imposed where required.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed works are as follows: -

- Alterations and additions to the Ground Floor dwelling house including a first floor addition;

Ground Floor

- *Internal alterations to open up the rear of dwelling to create an open plan living area with kitchen opening onto the deck.*
- *Installation of stairs to new first floor and a bathroom.*
- *Bedroom 2 converted into a study.*
- *Bedroom 1 and lounge room converted into a family room.*
- *Construction of covered rear deck with stairs to lawn*
- *New windows as detailed on plans*
- *New Garage at the front of the dwelling*

First Floor

New first floor including:

- *Master bedroom with walk in robe, ensuite, retreat and balcony*
- *Bathroom*
- *Bedroom 2 with built in robe*
- *Bedroom 3 with built in robe*
- *Sitting area*
- *Linen cupboards"*

- Swimming pool and landscaping
 - *"In-ground pool with spa with a volume of 55mL (pool) and 5mL (spa) and dimensions of 11.3m x 4m and maximum depth of 1.8m.*
 - *Raising of lawn by 600mm*
 - *Paved pool surrounds with compliant fencing as detailed on plans*
 - *Retaining wall and planter box"*
- Front Yard and front fence
 - *"New timber and masonry front fence 1.6m high.*
 - *New path to entry of the dwelling*
 - *New driveway*

- *New lawn area"*

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 15A DP 31138 , 14 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Ernest Street.</p> <p>The site is regular in shape with a frontage of 15.24m along Ernest Street and a depth of 57.435m. The site has a surveyed area of 875.3m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey dwelling with a metal roof and a carport and storage space along the western side boundary (adjacent to the dwelling).</p>

	<p>The site slopes from the front boundary down to the rear boundary with a slope of approximately 11%.</p> <p>The site has a mix of native and exotic species of shrubs, plants and trees. With a substantial large gum tree located within the front road reserve.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two storey dwellings with associated outbuildings/structures and landscaped gardens.</p>
--	--

Map:



SITE HISTORY

TA2020/0312 - Tree Application approved Tree Removal (2 trees) approved 27 April 2020

TA2020/0038 - Tree Application approved Tree Removal (1 tree) approved 1 August 2018

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 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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the survey plan which was not initially submitted with the documentation for this development application. A survey was submitted by the applicant's designer on 30 September 2020.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 29/09/2020 to 13/10/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr Brett David Christie Mrs Anita Catherine Christie	12 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mr Dieter Heinz Steinbusch	29 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Jenny Mcgrory	Address Unknown
Ms Shannon Elizabeth Walker	7 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mr Nicholas Ashley Peter Beck	13 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mr Timothy Dominic Humphreys	23 Ernest Street BALGOWLAH HEIGHTS NSW 2093

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

- Height of building
- East side setback
- East side wall height
- Total open space and landscaping
- Streetscape
- Prevailing front setback

- Pool
- Overshadowing
- Privacy
- Visual bulk
- Alts vs Adds vs New Build
- Impact of trees in the rear yard of 12 Ernest Street
- Floor Space Ratio
- NSW Land & Environment Court Planning Principles
- Suggested amendments
- Height Poles

The matters raised within the submissions are addressed as follows:

- **Height of building**

"A height greater than 8.5m is proposed, at 9.52m (12% non-compliance)"

Comment: Issues were raised that the height of the proposed additions exceeded the building height control by 1.02m (12% variation). Reviewing the Long Section (DA12) completed by Actions Plans, the survey completed by CMS Surveyors and an assessment by Council Planner (including a site inspection) established the building height of the proposal is 8.709m (2.5% variation).

A formal variation via Clause 4.6 Exceptions to Development Standards - Height of Buildings has been lodged with the development application. It is noted that only a small portion of the building exceeds the height control and combined with the slope of the land and the existing dwelling it is considered that the overall height is not excessive. The commentary in the submission in relation to the height of the building was considered in the merit assessment of the proposed height and it is considered that the proposal is reasonable and consistent with adjoining and surrounding buildings within the vicinity.

Given the above it is considered that the proposed alterations and additions to this dwelling house are consistent with surrounding and adjoining dwellings within the area and the variation is supported.

- **East side setback**

Comment: A review of the proposed side setbacks has been considered and assessed under Clause 4.1.4 (front, side and rear) and Building Separation of MDCP. Particular issue was raised in relation to first floor level (front portion) will be sited over the existing ground floor level. The proposed setbacks of 1.358m (49.1% variation) at the first floor level (front portion) is noted, however the first floor level (rear portion) has a side setback of 2.73m which is compliant with the side setback control of 2.67m. It is noted that a portion of this building will be located adjacent to the two storey dwelling at 12 Ernest Street is located approximately 1m away from the common side boundary shared with 14 Ernest Street.

Given the above it is considered that this issue does not warrant refusal and/or further amendr

- **East wall height**

Comment: Issue was raised that the proposed wall height will be 8.2m a 14% variation a non-compliant with the control of 7.2m wall height. Council has assessed the wall height varying from 6.3m - 8m (Nil - 11.1% variation) on the eastern elevation and 6m - 7.7m (Nil - 6.5% variation) on the western elevation. Please refer to Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the MDCP.

It is considered that the proposed wall heights are considered generally consistent with recent approvals granted under the current controls of the MLEP 2013 and MDCP.

Given the above it is considered that this issue does not warrant refusal and/or further amendment via condition(s).

- **Total open space and landscaping**

Comment: Issue was raised about the non compliance with the total open space and landscaping by objectors. The total open space requirement under Clause 4.1.5.1 Minimum Residential Total Open Space (TOS) Requirements Residential Open Space Area: OS3 is 55% (481.4sqm) of site area. It is noted that the proposed open space is under this requirement by 10.62sqm (2.2%) with a proposed open space of 53.8% (470.79sqm) of the site. An assessment under Clause 4.1.5 of Manly Development Control Plan (MDCP) has been undertaken and considered the variation acceptable based on the improved on the existing amount of TOS on the site is 50.4% (441.55m²) and it was concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, the assessment finds that the proposal is supported, in this particular circumstance.

The required landscaping under Clause 4.1.5.2 of MDCP was 35% (168.49sqm) of open space. The proposed landscape open space was assessed as compliant 70.6% (339.89sqm).

- **Streetscape**

Comment: Issue were raised by objectors that the proposed alterations and additions to the existing dwelling would create a *"negative impact on the streetscape and general neighbourhood"*

A review of the relevant control of MDCP Clause 3.1.1 Streetscape (Residential areas) states:-

"Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area."



- **16 Ernest Street**
Street



18 Ernest



20 Ernest Street

Reviewing the streetscape there are many examples of garages and parking structures at street level take a large portion of their respective site frontage.

Given the above it is considered that the proposal is consistent with the existing streetscape of Ernest Street. It is therefore considered that this issue does not warrant refusal and/or further amendment via condition(s).

- **Prevailing front setback**

Issues were raised that the proposal did not comply with the prevailing front setback. Clause 4.1.4.1 Street Front setbacks of the MDCP states: -

"a) Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.

b) Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback generally applies. This street setback may also need to be set further back for all or part of the front building façade to retain significant trees and to maintain and enhance the streetscape."

Comment: The existing setbacks of 16 Ernest Street and 12 Ernest Street would state the prevailing front setback could be 12.806m, however point (b) states *"Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in*

the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback generally applies. This street setback may also need to be set further back for all or part of the front building façade to retain significant trees and to maintain and enhance the streetscape."

The front setbacks of dwellings along the northern side of Ernest Street are variable and this can be seen from the below aerial. Given this it is considered that the proposed setback to the garage (6.962m) and the additions to the dwelling (10.6m) are compliant with Clause 4.1.4.1 Street Front Setbacks.



Source: Spatial Enabled Application (SEA)

- **Pool**

Comment: Issues were raised about the swimming pool given it's height above natural ground and it's position to the eastern side boundary (shared with 12 Ernest Street). Additionally issues were raised about the proposed location of the swimming pool fence would be located on the common side boundary and privacy issues.

The proposed swimming pool fails to comply with specific requirements of Clause 4.1.9 Swimming Pools, Spas and Water Features. The proposed height of the pool is 1.23m above natural ground level (which is a variation of 23%) above the 1m high requirement. The position of the swimming pool from the eastern side boundary fails to comply with the 1m curtilage requirement (proposed curtilage of 0.9m (10%) and 1.5m water side setback (proposed water side setback of 1.196m (20.3%)).

Given the above it is considered three elements (height, curtilage and water side setback) will be conditioned accordingly to ensure that the setback and height of the swimming pool is compliant with these relevant controls of the MDCP.

The fence will be 1.2m high fence is to be located on the eastern most edge of the curtilage/coping,

it is considered that is a reasonable outcome and compliant with AS1926 Swimming Pool Safety Fencing.

It is therefore considered that this issue does not warrant refusal subject to the above conditions as recommended.

- **Overshadowing (solar access)**

Comment: Issues were raised by 12 Ernest Street which is located to the east of the subject site stating overshadowing the living area, kitchen, study and bedroom (northwest corner first floor).

Comment: Please refer to Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP for a detailed assessment. In short it was considered that the proposal was acceptable and consistent with the provisions of this Clause and the development allows for sufficient solar access to the private open space of and living rooms of 12 Ernest Street and does not warrant refusal and/or further amendment via condition(s).

- **Privacy**

Comment: Issues were raised about privacy from new windows on the eastern elevation on the ground and first floor levels of the proposed alterations and additions. Ground floor new windows W02 (kitchen), W03 (pantry/laundry) & W04 (water closet) are to be treated or fitted with obscured or frosted glazing on the ground floor. First floor windows W20 (bathroom) & W21 (bedroom 2) have a minimum sill height of 1.5m above the finished floor level are adequate to provide reasonable amenity for both parties. Windows W17 (ensuite) & W19 (stairs) are to be treated or fitted with obscured or frosted glazing. Window W16 (retreat) is to be either fitted or treated with obscured or frosted glazing or replaced with a window with a minimum sill height of 1.5m above the first floor level to ensure reasonable amenity of both parties.

Given the above it is considered that the proposal will satisfy Clause 3.4.2 Privacy and security of the MDCP and does not warrant refusal of this application subject to the above conditions as recommended.

- **Visual bulk**

Comment: Issues have been raised in relation to bulk and scale of the proposed alterations and additions to the dwelling house.

It is considered that the proposal provides an articulated built form consistent with the surrounding context.

Given the above it is considered that this issue does not warrant refusal and/or further amendment (s) via condition.

- **Height poles**

Comment: A request was made by the owner of 12 Ernest Street for the erection of height poles by a registered surveyor to identify the height, bulk and scale. Council has assessed these issues during a number of site inspections to the subject site and the adjoining residence to the east known as 12 Ernest Street. Council's Planner attended site on 12 February 2021 and 16 February 2021 and considered that the erection of height poles was not required and an assessment of the proposal could be fully undertaken based on these site inspections and review of the submitted plans with this development application.

- **Floor space ratio (FSR)**

Comment: A submission claimed that the proposal exceeded the FSR requirement of the MLEP 2013 - Clause 4.4 Floor space ratio. Based on the site area (875.3m²) and the allowable FSR of 0.45:1 (393.9sqm) and the applicant's planner and designer claimed that the FSR was 0.31:1 (275.8sqm). However, the existing single garage which is proposed to be utilised for storage must be added to the FSR calculations as it is no longer used for parking and is not located within the subfloor area/footprint of the dwelling. Therefore, with the addition of this space (former single garage) the proposed FSR is 0.34:1 (295sqm).

Given the above the proposal is fully compliant with Clause 4.4 Floor space ratio of the MLEP 2013.

- **Alts vs Adds vs New Build**

Comment: Issue was raised that the proposal was not alterations and additions to an existing dwelling was a new build (dwelling). A review of the plans demonstrates that the proposed works represent "alterations and additions" as per the Planning Principals of the Land and Environment Court case Edgar Allen Planning Pty Limited v Woollahra Municipal Council 2006 LGERA 1 and Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187.

- **Impact of trees in the rear yard of 12 Ernest Street**

Comment: The neighbouring owners raised the possible impacts of the swimming pool on a gum tree located in the northwest corner (rear yard) and the two mango tree located on the common side boundary shared with the subject site. A review of the proposal was undertaken by Council's Senior Landscape Architect and the following comments were: -

"No Landscape Plans are provided with the application. The site contains existing landscape within the front setback that remains largely unchanged and the rear yard includes new landscape works including raised lawn area associated with the swimming pool works and thus screen planting shall be a condition of consent along the east and west rear boundaries to the extent of the raised lawn and swimming pool alignment. One small tree is proposed to be removed within the rear to accommodate the swimming pool works, and no design alternative is available to retain this tree. Additional two exempt species (by type or height) are required to be removed for the swimming pool works.

Landscape works shall include the provision of replacement tree planting to satisfy the requirement of clause 4.1.5.2 (c) minimum number of native trees to be supported within the site (existing or proposed), that is a total of three in this case.

Landscape Referral provide no objections to the proposal subject to conditions of consent.

The proposal is therefore supported."

On the 16 February 2021 by Council's Planner undertook a further site inspection and had further discussions with Council's Senior Landscape Architect after that site inspection it is considered that the following condition will ensure reasonable protection for these trees:-

"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, excluding exempt trees and vegetation under the relevant planning instruments of legislation,

- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of 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 by fencing shall be installed around the existing large Gum within the road verge. As a minimum the tree protection fencing shall consist of 1 standard 2.4m panel length to four sides, and placed at the back of kerb on one side and along the existing driveway along on the one side, and installation shall be in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970- 2009 Protection of Trees on Development Sites. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the fencing nor the canopy dripline.

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."

It is considered that matter has been addressed and does not warrant refusal and/or further amendment via condition(s).

- **NSW LEC Planning Principles**

- **Height, bulk and scale - Veloshin v Randwick Council [2007] NSWLEC 428 at 32-33**

"The impacts are not consistent with the impacts that would be reasonably expected under the controls. The proposals are non-compliant in multiple areas, and the Applicant has not quantified the difference between the impacts of a complying and a non-complying development."

Comment: The proposed development has been assessed against the controls of both the MLEP and MDCP controls and reviewed against other development within the vicinity.

It is considered via the submitted information and assessment that the impacts are reasonable and consistent.

- **General impact - Davies v Penrith City Council [2013] NSWLEC 1141 at [116] to [121]**

Issues were raised about floor space and amenity could be achieved while reducing the impacts.

Comment: As previously stated the proposed floor space is consistent with other developments within the vicinity.

Additionally amenity issues have also been considered and subject to condition these privacy issues can be suitably addressed.

- **Project Venture Developments v Pittwater Council (2005) NSW LEC 191, NSW LEC considered character:**

"whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site's visual catchment"

Commentary:

"The non-compliant elements of the proposed development, particularly caused from the non-compliant front setbacks, the excess height, and the 5m boundary walls, would have most observers finding 'the proposed development offensive, jarring or unsympathetic in a streetscape context.'"

Comment: As stated previously the proposal is deemed to be compliant with the front setback control (numeral), assessment of the building height and wall heights have also been addressed within this assessment report. The proposal is considered to be consistent with surrounding and nearby development and demonstrates sufficient articulation and spatial separation to adjoining dwellings. The resultant dwelling will address the streetscape with adequate setbacks and visual modulation to ensure harmonious consistency with the existing streetscape of Ernest Street.

- **Suggested amendments**

- *"Increase Eastern First Floor Side Setback to 2.75m*

- *Reduce Building Roof Height to be below 8.5m maximum building height*
- *Reduce eaves to 300mm*
- *Reduce Roof to 2-degree pitch*
- *Raise sills to 1.6m high to windows W02, 03, 04 & W16, 17, 18, 19, 20, 21*
- *The pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary. The pool to be relocated with a greater side setback. The pool must not be more than 1m above ground level existing in any location, and to be lowered below RL 36.5, and not exceed the RL 35.5 contour. Landscape zone in the 2m side setback zone adjacent the pool to be deep soil, dense planted with species 3m high at close centres."*

Comment: The proposed first floor demonstrates varying side setbacks to both properties with the eastern side setbacks varying from 1.3m to 2.73m and on the western side setbacks varying from 3.319m to 5.3m. It is considered that the proposed first floor demonstrates sufficient variation and articulation (in particular as the dwelling slope further down the site).

The proposed building height has previously discussed and it is considered the minor non-compliance, the fact that the application is for alterations and additions to a dwelling and the slope (11% grade) are supportable in this instance.

The eaves are 0.4m and it is considered these are not excessive.

Windows on the eastern elevation have been previously addressed in this section of this assessment report. Proposed windows are either considered to be satisfactory and/or conditioned accordingly with frosting/obscuring or the replaced with high sill window(s) to ensure reasonable amenity for both parties.

Consideration of the recommendations for the proposed swimming pool have been looked at and it is considered that condition the reduction of the swimming pool height to 1m above natural ground level, the water side to be conditioned to 1.5m and the curtilage be located 1m from the eastern side boundary. It is noted that the Senior Landscape Architect from Council has stated the following:-

"The site contains existing landscape within the front setback that remains largely unchanged and the rear yard includes new landscape works including raised lawn area associated with the swimming pool works and thus screen planting shall be a condition of consent along the east and west rear boundaries to the extent of the raised lawn and swimming pool alignment."

It is considered that matter has been addressed and does not warrant refusal and/or further amendment via condition(s).

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is for alterations and additions to an existing dwelling and the construction of a swimming pool.</p> <p>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:</p> <ul style="list-style-type: none"> • 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, • section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping. <p>No Landscape Plans are provided with the application. The site contains existing landscape within the front setback that remains largely unchanged and the rear yard includes new landscape works including raised lawn area associated with the swimming pool works and thus screen planting shall be a condition of consent along the east and west rear boundaries to the extent of the raised lawn and swimming pool alignment. One small tree is proposed to be removed within the rear to accommodate the swimming pool works, and no design alternative is available to retain this tree. Additional two exempt species (by type or height) are required to be removed for the swimming pool works. Landscape works shall include the provision of replacement tree planting to satisfy the requirement of clause 4.1.5.2 (c) minimum number of native trees to be supported within the site (existing or proposed), that is a total of three in this case.</p> <p>Landscape Referral provide no objections to the proposal subject to conditions of consent.</p>
NECC (Development Engineering)	<p>The proposed method of stormwater disposal is satisfactory. The proposed reconstruction of the driveway crossing and internal driveway is also satisfactory.</p> <p>No objection to approval, subject to conditions as recommended.</p>

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A383818_02 dated 21 July 2020).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
---------------------------------	-----

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.709m	2.5%	No
Floor Space Ratio	FSR: 0.45:1 (393.9sqm)	Proposed FSR: 0.34:1 (295sqm) Existing FSR 0:16:1 (142.2sqm)	N/A N/A	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
Part 6 Additional local provisions	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.709m
Percentage variation to requirement:	2.5%

Assessment of request to vary a development standard:

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

130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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 development is consistent with the bulk and scale of the neighbourhood. The variation is minor and is largely the result of the topography of the site and desire to ensure the dwelling is consistent with the desired future streetscape character in the locality.

The proposed height and built form is considered to be consistent with other approved dwelling houses with the locality on sloping sites, which breach the height limit.

The proposed variation is just 3.45% or 0.294metres. The resulting dwelling is considered to be compatible with the prevailing height of buildings and streetscape character within the locality, despite the non-compliance, with the variation largely attributed to the sloping topography of the site. It is considered this objective is met, despite the numerical variation."

Reviewing the argument put forward by the applicant the proposed development (overall) combined with the moderate slope of land (over 11% grade) it is concurred that the variation to the building height is justified in this instance with the expectation that Council's Planner has assessed the variation of 2.5% and 0.209m above the 8.5m building height control (proposed height 8.709m).

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

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

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

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

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

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

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

Objectives of development standard

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

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

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

Comment: The proposed development is considered to be consistent and compatible in terms of height with the surrounding dwellings demonstrating varying roof form and overall building height that is general consistent with adjoining and surrounding buildings. The breach is contained to the middle portion of the building encroaches the maximum building height. The resultant dwelling demonstrates good modulation and varying side setback to assist in providing sufficient articulation and maintain the

desired future streetscape character in the locality.

b) to control the bulk and scale of buildings,

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

c) to minimise disruption to the following:

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

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

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

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

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

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

Zone objectives

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

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

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

It is considered that the development satisfies this objective.

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

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

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 599.1sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling	1	N/A	Yes
	Dwelling Size: 112sqm (minimum)	275.58sqm	N/A	Yes
4.1.2.1 Wall Height	E: 7.2m (based on gradient 1:9)	6.3m - 8m	11.1%	No
	W: 7.2m (based on gradient 1:9)	6m - 7.7m	6.5%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.8m	N/A	Yes
	Parapet Height: 0.6m	0.4m	N/A	Yes
	Pitch: maximum 35 degrees	12 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m (Ernest Street)	6.962m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.67m (based on wall height)	1.343m	49.7%	No
	W: 2.57m (based on wall height)	0.9m*	65.0%	No
	Windows: 3m	1.348m - 3.319m	Nil - 55.1%	No
4.1.4.4 Rear Setbacks	8m	28.756m	N/A	Yes
4.1.5.1 Minimum Residential Total Open	Open space 55% (481.4sqm) of site area	53.8% (470.79sqm)	2.2% 10.62sqm	No

Space Requirements Residential Open Space Area: OS3	Open space above ground (maximum) 40% (192.56sqm) of total open space	10.8% (52.12sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (168.49sqm) of open space	70.6% (339.89sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	30.9sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.8m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.23m	23%	Yes**
	1m curtilage/1.5m water side/8m rear setback	0.9m (curtilage), 1.196m (water side), 8.7m (rear setback)	10% (curtilage) 20.3% (water side)	Yes***
Schedule 3 Parking and Access	Dwelling - 2 spaces	2 spaces	N/A	Yes

* Side setback to garage (0.9m) additions to the dwelling are compliant with the numeric control
(western side setback - 3.319m(dwelling))

** Height of swimming pool to be conditioned to 1m above ground

*** Curtilage conditioned to 1m and water side to 1.5 from the from eastern side boundary to ensure compliance.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes
Schedule 3 - Part B - Minimum Dimensions for parking, access and loading	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

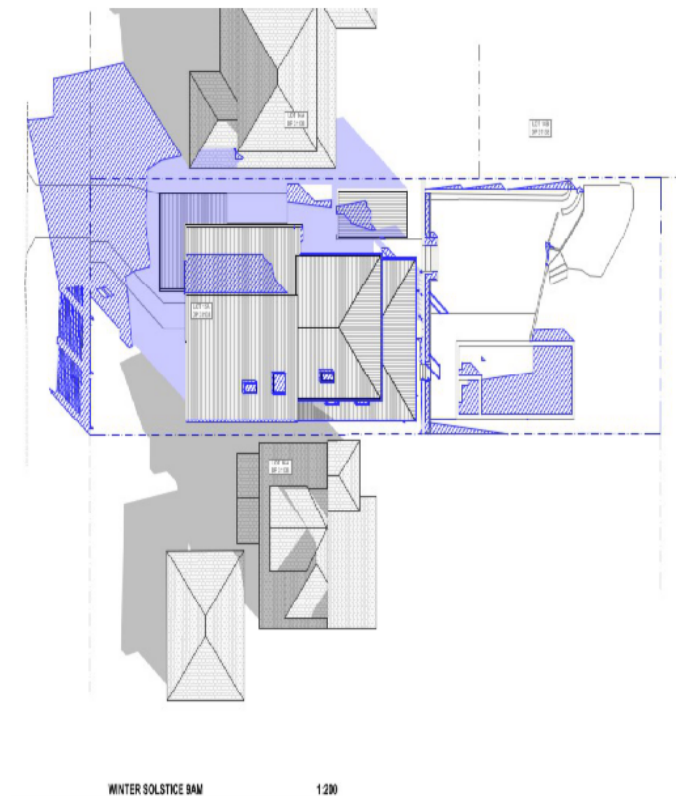
The proposed alterations and additions is considered to demonstrate sufficient solar access to the north facing living room at 12 Ernest Street.

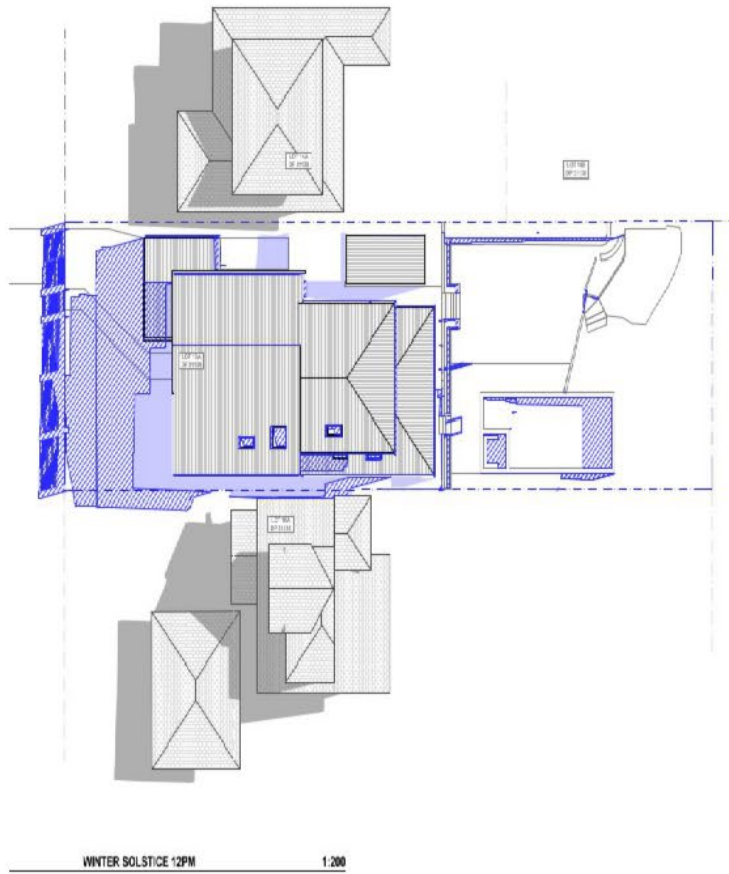
This clause states the following: -

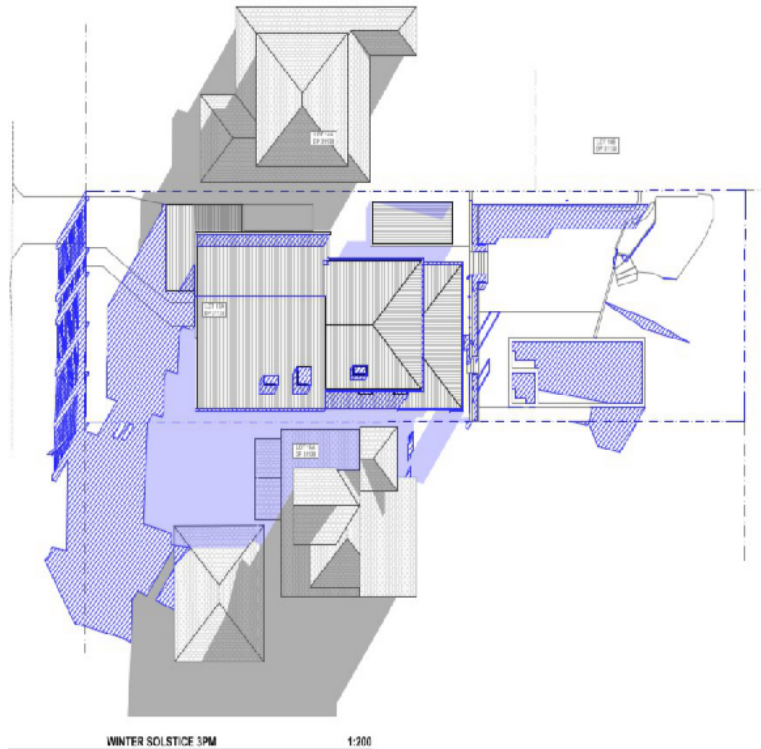
"adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June)"

Comment: As demonstrated by the submitted solar access diagrams the northern facing ground floor living room window will achieve this required. Additionally, the private open space will also achieve the required hours of solar access.

It is considered that the proposal is compliant with this clause and does not warrant refusal or further amendments via condition(s).







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

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

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

Description of non-compliance

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

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.05m from the eastern boundary and 2.403m from the western boundary. Further, new windows facing side boundaries are to be setback at least 3m from the side boundary.

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

The development proposes the following:

Front setback- 6.962m, compliant with the the numeric control.

East side setback- 1.343m - (34.4% variation to the numeric control).

West side setback- 0.9m (garage) (62.5% variation to the numeric control) - additions to the dwelling

are compliant with the numeric control.

Rear setback- 28.756m, compliant with the the numeric control.

Windows- 1.348m (55.1% variation to the numeric control).

Merit consideration:

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

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

Comment:

The development proposed a new garage with a compliant front setback to the front southern boundary. Similar types of parking arrangements are seen along the northern side of Ernest Street. This proposed development is consistent with the spatial proportions of the street and the street edge.

The development proposes landscaping elements within the front setback area plantings to ensure consistency with this merit consideration.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

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

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

Comment:

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

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*

- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

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

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

Comment:

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

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

4.1.5 Open Space and Landscaping

Description of non-compliance

4.1.5.1 Minimum Residential Total Open Space Requirements

The site is located in the OS3 area, which requires a minimum 55% (481.41m²) of site area 875.3m² to be classified as Total Open Space (TOS).

The proposed development incorporates of 53.8% site area (470.79m²) as TOS, representing a variation of 2.2% (10.62m²).

The existing amount of TOS on the site is 50.4% (441.55m²).

The proposed development demonstrates compliance with the maximum open space above ground with a proposed 10.8% (52.1m²) and landscape area requirements 70.6% (339.9m²).

Merit consideration:

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

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

Comment:

The proposed development does not result in the removal of any significant or native vegetation.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage

appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The site is compliant in terms of landscaped area.

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

Comment:

The proposed development is not expected to result in unreasonable amenity impact to adjacent properties by way of solar access, privacy and view loss.

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

Comment:

The proposed landscaped area is sufficient and will assist in water infiltration, thereby decreasing stormwater runoff.

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The proposal will not compromise potential wildlife habitat within the locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in 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 \$10,230 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,023,000.

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

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

Conclusions on the Assessment of the Application

As addressed within this assessment report the proposed development does not comply with the Clause 4.3 Height of buildings and a formal request via Clause 4.6 Exceptions to development standard was lodged by the applicant's planning consultant was assessed and considered acceptable in this instance given the existing building footprint of the existing, moderate sloping nature of the subject site (11% sloping grade within the building footprint) and the proposal has been considered as alterations and additions to existing dwelling versus a new dwelling.

Variations to the MDCP 2013 controls Clause 4.1.2 Height of Buildings (Incorporating Wall Height), Clause 4.1.4 Setbacks (side) and Clause 4.1.5 Open space and landscaping have been considered

and addressed and supported. The proposed design does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MLEP 2013 and MDCP 2013.

In this case, the proposed development provides a design that involves sufficient modulation and sufficient physical separation from neighbouring dwelling(s). Conditions have been included to ensure reasonable amenity (privacy and acoustic) is achieved to adjoining and surrounding properties and are maintained. Furthermore, an assessment against the objectives of the development standards and DCP controls has found the proposal to be consistent with those provisions and reasonable.

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

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2020/1173 for Alterations and additions to an existing dwelling including landscape works and the construction of a swimming pool on land at Lot 15A DP 31138, 14 Ernest Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02	31 August 2020	Action Plans
DA03	31 August 2020	Action Plans
DA04	31 August 2020	Action Plans
DA05	31 August 2020	Action Plans
DA06	31 August 2020	Action Plans
DA07	31 August 2020	Action Plans
DA08	31 August 2020	Action Plans
DA09	31 August 2020	Action Plans

DA10	31 August 2020	Action Plans
DA11	31 August 2020	Action Plans
DA12	31 August 2020	Action Plans
DA13	31 August 2020	Action Plans
DA14	31 August 2020	Action Plans
DA17	31 August 2020	Action Plans
DA21	31 August 2020	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment	30 July 2020	Ascent Geotechnical Consulting

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	10 September 2020	James & Kathryn Martin

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	20 October 2020

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments

specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 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 sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS**5. Policy Controls****Northern Beaches 7.12 Contributions Plan 2019**

A monetary contribution of \$10,230.00 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 \$1,023,000.00.

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

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

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

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

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

6. Security Bond

A bond (determined from cost of works) of \$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****7. Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the inter-allotment drainage easement benefiting the site.

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

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

8. Amendments to the approved plans

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

- Ground floor new windows W02 (kitchen), W03 (pantry/laundry) & W04 (water closet) are to be treated or fitted with obscured or frosted glazing on the ground floor.
- Windows W17 (ensuite) & W19 (stairs) are to be treated or fitted with obscured or frosted glazing.
- Window W16 (retreat) is to be either fitted or treated with obscured or frosted glazing or replaced with a window with a minimum sill height of 1.5m above the first floor level.
- The swimming pool height to be no higher than 1m above natural ground level, the water side to be located 1.5m from the eastern side boundary and the curtilage be located 1m from the side boundary.
- Front fencing height is to be a maximum up to 1.5m and at least 30 percent of the fence is open/ transparent for at least that part of the fence higher than 1m.

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

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

9. Boundary Identification Survey

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

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

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

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

10. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the

protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

11. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

12. **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.

13. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Tree removal within the property**

This consent approves the removal of the following trees within the property:

- trees (x 3) as identified for removal as determined by drawing number DA01 and DA02.

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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. Road Reserve

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

Reason: Public safety.

16. Removing, Handling and Disposing of Asbestos

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

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

17. 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.

18. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

19. **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.

20. **Vehicle Crossing**

The Applicant is to re-construct the vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 NL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

21. **Waste Management During Development**

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

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

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of 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 by fencing shall be installed around the existing large Gum within the road verge. As a minimum the tree protection fencing shall consist of 1 standard 2.4m panel length to four sides, and placed at the back of kerb on one side and along the existing driveway along on the one side, and installation shall be in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the fencing nor the canopy dripline.

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**

23. **Landscape completion**

Landscaping is to be implemented in accordance with 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 or in accordance with Council's Native Plant Species Guide - Manly Ward, including two (2) located within the rear setback,
- ii) tree planting shall be installed at a minimum 75 litre container pot and shall be located within a 9m² deep soil area and be located a minimum of 5 metres from existing and proposed buildings,
- iii) 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,
- iv) along the eastern and west boundary to the extent of the swimming pool / paved area, and the levelled lawn area, screening planting shall be installed to achieve residential screening amenity, and shall be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch, and capable of attaining 3 metres in height at maturity,
- v) all planting near swimming pools shall be non-climbable to satisfy the relevant swimming pool Australian Standard,
- vi) all other garden beds shall be either retained existing vegetation or new planting.

Prior to the issue of an Occupation Certificate, details 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.

24. **Stormwater Disposal**

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

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

25. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

26. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;

- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

27. **Swimming pool filter (noise)**

The swimming pool filter is not create any noise which exceeds over 5dB(A) above the ambient background noise levels when measured from any property boundary.

Reason: Ensure reasonable acoustic amenity.

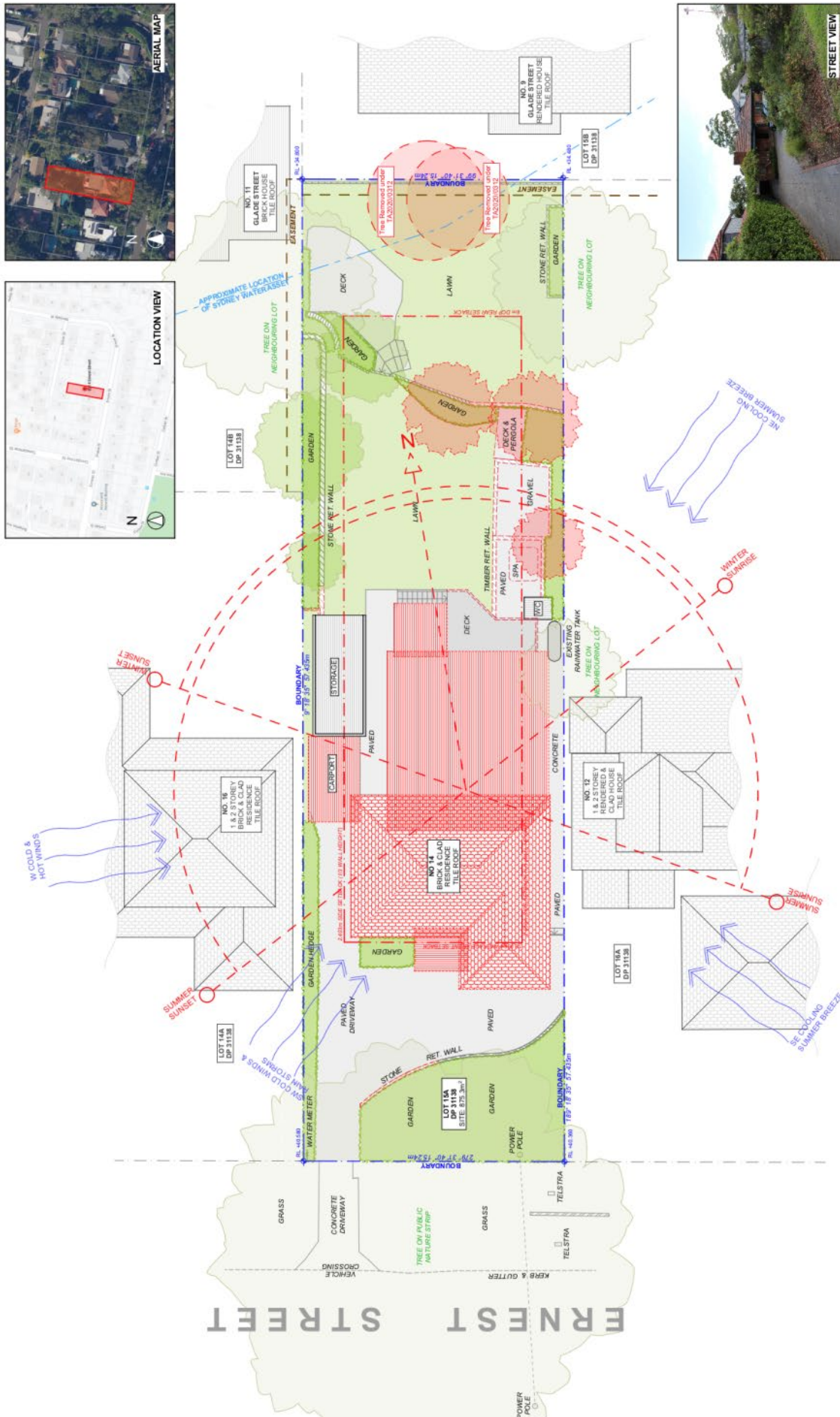
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

28. **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 conditions of consent.

Reason: to maintain local environmental amenity.



1:200

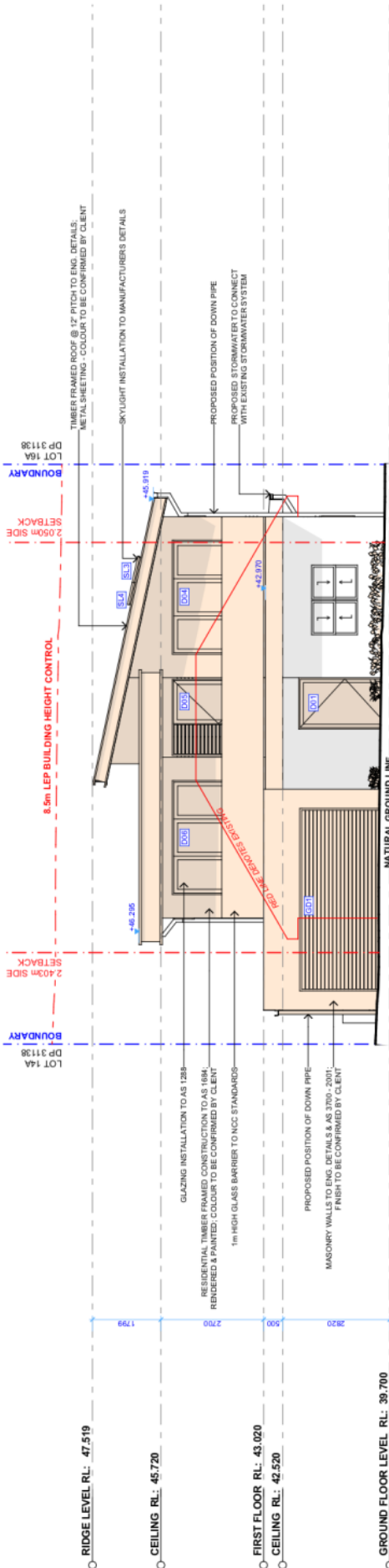
SITE ANALYSIS

1

REV.	DATE	COMMENTS	DRWN NOTES	LEGEND	EXISTING	EX.	PROPOSED	CLIENT	DRAWING NO.	DRAWING NAME
A	22.07.20	DA DOCUMENTATION	EAS	<div>SOFT LANDSCAPE</div> <div>HARD LANDSCAPE</div> <div>PROPOSED EXISTING</div> <div>DEMOLISHED</div>	<div>EXISTING DOWNPIPE</div> <div>PROPOSED DOWNPIPE</div>	DP	DP	KATE & JAMES MARTIN	DA01	SITE ANALYSIS
								PROJECT ADDRESS	DATE	SCALE
								14 ERNEST STREET, BALGOWLAH HEIGHTS NSW 2093	Monday, 31 August 2020	1:200 @A3

ACTION PLANS

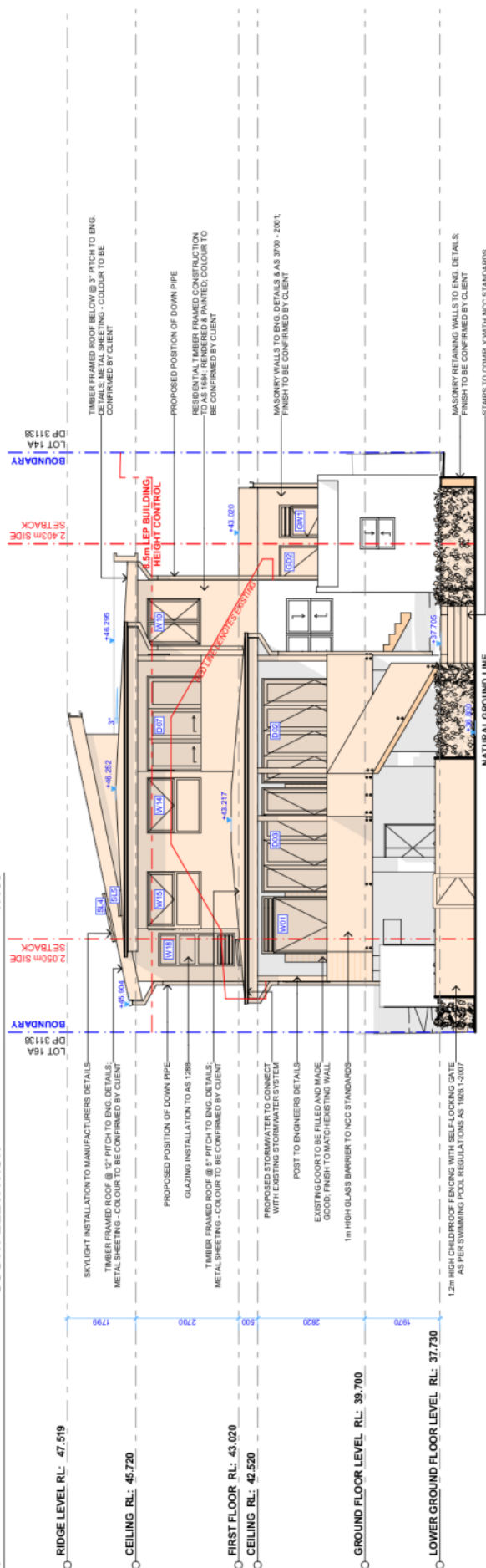
m: 0426 957 518
e: operations@actionplans.com.au
w: www.actionplans.com.au



SOUTH ELEVATION

1:100

1



NORTH ELEVATION

1:100

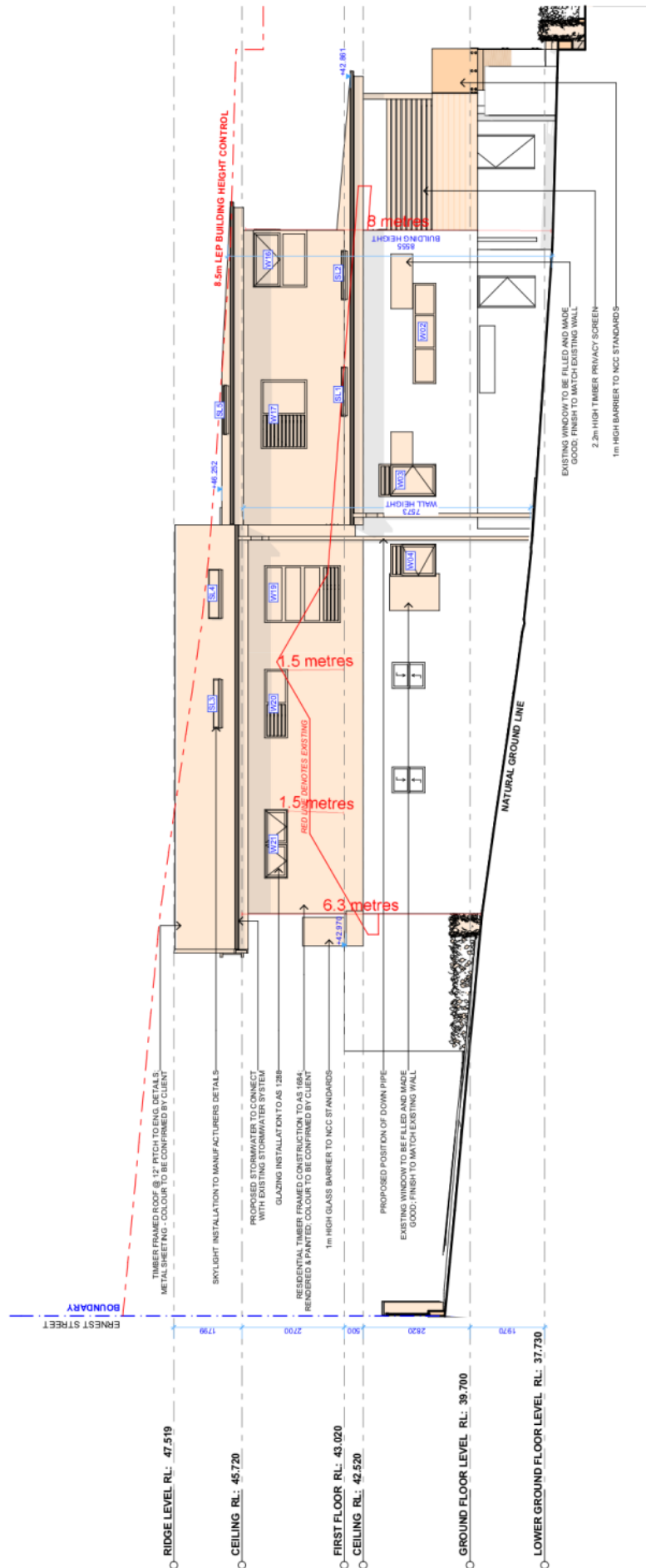
2

REV.	DATE	COMMENTS	DRWN	NOTES
A	22.07.20	BA DOCUMENTATION	EAB	

	EXISTING
	PROPOSED

	ACTION PLANS m: 0426 957 518 e: operations@actionplans.com.au w: www.actionplans.com.au
--	---

CLIENT KATE & JAMES MARTIN	DRAWING NO. DA08	DRAWING NAME NORTH / SOUTH ELEVATION
PROJECT ADDRESS 14 ERNEST STREET, BALGOWLAH HEIGHTS NSW 2093	DATE Monday, 31 August 2020	SCALE 1:100 @A3




1:100

EAST ELEVATION

1

REV.	DATE	COMMENTS	DRWN/NOTES	LEGEND	CLIENT	DRAWING NO.	DRAWING NAME
A	28.07.20	BA DOCUMENTATION	EAS	EXISTING PROPOSED	KATE & JAMES MARTIN	DA10	EAST ELEVATION
ACTION PLANS				PROJECT ADDRESS			
m: 0426 957 518 e: operations@actionplans.com.au w: www.actionplans.com.au				14 ERNEST STREET, BALGOWLAH HEIGHTS NSW 2093			
				DATE			
				Monday, 31 August 2020			
				SCALE			
				1:100 @A3			



<div><div><div>m: 0428 957 518 a: actionplans.com.au w: www.actionplans.com.au</div></div><div>ACTION PLANS</div></div>				REV.	DATE	COMMENTS	DRWN	NOTES	LEGEND		CLIENT	DRAWING NO.	DRAWING NAME
A				22.07.25	SA DOCUMENTATION	EAB	<div><div><div></div><div>EXISTING</div></div><div><div></div><div>PROPOSED</div></div></div>		KATE & JAMES MARTIN	DA09	WEST ELEVATION		
									PROJECT ADDRESS	DATE	SCALE		
									14 ERNEST STREET, BALGOWLAH HEIGHTS	Monday, 31 August 2020	1:100 @A3		

ITEM 3.4

**DA2020/0970 - 3 FRANCIS STREET FAIRLIGHT - ALTERATIONS
AND ADDITIONS TO EXISTING DWELLING INCLUDING
SWIMMING POOL AND CARPORT**

REPORTING MANAGER **Anna Williams**

TRIM FILE REF **2021/099177**

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 **approves** Development Consent to DA2020/0970 for alterations and additions to existing dwelling including swimming pool and carport on land at Lot 4 DP 72568, 3 Francis Street, Fairlight, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0970
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 4 DP 72568, 3 Francis Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to existing dwelling including swimming pool and carport
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Monique Louise Jackson Benjamin Philip Jackson
Applicant:	Benjamin Philip Jackson
Application Lodged:	25/08/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/09/2020 to 17/09/2020
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.3 Height of buildings: 8.94%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,100,000.00

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves alterations and additions to the existing dwelling on site. The existing parking structure located in the rear (north west) corner of the site will be demolished and replaced with soft landscaping. A new carport will be constructed in the side setback area adjacent to the northern side of the dwelling. A pool is also proposed in the rear yard, and fencing along all boundaries.

The alterations and additions include an extension of the existing ground level to the rear. Due to the existing floor level and slope of the land this will be raised, and a new rumpus room is proposed beneath the extension. A new upper level is also proposed. The altered dwelling will be comprised of the following:

Lower ground floor:

- Rumpus room

Ground floor:

- Living / dining / kitchen
- New rear deck
- Existing laundry, study, two bedrooms and bathroom retained.

First floor:

- Three new bedrooms, bathroom and ensuite

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 4 DP 72568 , 3 Francis Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The site is a rectangular shaped lot located on the western (down hill) side of Francis Street. It is legally described as Lot 4 DP 72568. The site has a width of 12.19m, depth of 32.155m, and area of 392sqm.</p> <p>The site has a fall from front to rear of approximately 3.5m. There is an existing single level dwelling on site, raised at the rear due to the slope of the land. A driveway runs along the northern side boundary, with a garage located in the rear north western corner of the site. There is also an existing Council storm water pipe running adjacent to the northern boundary, which does not currently have an easement over it. An easement will be required to be created by condition of consent should this application be approved.</p> <p>Surrounding development consists mainly of single detached dwellings, of various heights and styles. The neighbouring building to the south is a dual occupancy development (one upstairs one downstairs).</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)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter 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 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	The site is considered suitable for the proposed development.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/09/2020 to 17/09/2020 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 6 submission/s from:

Name:	Address:
Mr Per Mueller	5 Francis Street FAIRLIGHT NSW 2094
Mr Robert John Hendrik Baker Mrs Joscelyn Theresa Baker	1 Francis Street FAIRLIGHT NSW 2094
Mr David Malcolm North	2 Daintrey Street FAIRLIGHT NSW 2094
Mr Gary Donald Blair	4 Daintrey Street FAIRLIGHT NSW 2094
Colco Consulting Pty Ltd	29 A Amiens Road CLONTARF NSW 2093
Mrs Julie Anne Blair	4 Daintrey Street FAIRLIGHT NSW 2094

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

- Rear setback of dwelling and pool
- Height
- Screening along rear boundary
- Increase in ground level at rear boundary
- Pool filter/heater location
- Pool overflow
- Kitchen Venting
- Undercroft area
- Stormwater easement and drainage to rear
- Construction impacts
- Solar access
- Bulk and scale

- Privacy
- Rear boundary fence encroachment

The matters raised within the submissions are addressed as follows:

- **Setbacks of dwelling and pool**

Concerns were raised with respect to the proposed rear and side setbacks of both the proposed pool and the rear extension to the dwelling.

Comment:

The proposal was amended during the assessment process, to fully comply with the setback requirements for pools. It is further noted that the development complies with the 8m rear setback requirement, but does not fully comply with side setback requirements. The proposal has been assessed against the relevant setback controls, and in relation to amenity impacts including privacy and solar access (see relevant sections of this report). In summary, the proposal is not assessed to result in unreasonable impacts in this regard, and no further amendment nor refusal of the application is recommended.

- **Height**

Concerns were raised regarding the height of the proposal.

Comment:

The proposal does not comply with the height of buildings development standard. This issue has been assessed in detail under clause 4.6 of the LEP in this report. In summary, the proposed breach is considered acceptable in this instance, and is not considered to result in unreasonable impacts. Amendment or refusal of the application is not recommended in this regard.

- **Screening along rear and side boundary**

Concerns were raised with respect to existing screen planting along the rear boundary, and that it would not survive the proposed location of the pool. Further concerns were raised with respect to pool fencing requirements and the proposed screen planting. Upon amendment of the plans, further concerns were raised that the screening didn't extend along the full rear boundary.

Comment:

The proposal has been amended to increase the rear setback of the pool to 1.5m from the rear boundary. The landscape plan was also amended to provide screen planting along the rear and south side boundary, to replace the existing planting. The applicant made the following statement in this regard:

I have nominated a particular screen plant (Syzygium 'Straight and Narrow') to replace the Murraya. This Lilly Pilly cultivar has been developed specifically for this type of narrow vertical screening requirement. It is super fast growing and can go into the ground at 2 metres high at time of planting.

It will grow a minimum 3.5 metres and can grow up to 5-6. It can basically be hedged at any height required between 2-6 metres. It is the perfect specimen for this requirement and we can keep it narrow enough to provide the 900mm clearance from the boundary fence.

For the side boundary within the pool enclosure I am nominating the transplanting the two Magnolia Little Gems to outside the pool enclosure closer to the rainwater tank. This will be replaced with a lower height growing Syzygium 'Bronze Bay' that has the same hedging

characteristics as the rear boundary Lilly Pilly but at a lower height up to 2 metres as the side garden is raised above the pool level in any case.

Council's landscape officer has assessed the proposal and is satisfied with the landscape plan provided. Conditions of consent will require the landscape plan to be implemented, screen planting to extend across the entire rear boundary, and for swimming pool fencing regulations to be complied with. Subject to these conditions, the submission is considered to be satisfied to a reasonable degree. No further amendment or refusal of the application is recommended.

- **Increase in ground level at rear boundary**

Concerns were raised regarding raising the ground level at the rear of the property.

Comment:

The plans will maintain existing ground levels at the rear of the property surrounding the pool. A small masonry wall (top of wall RL40.10) is proposed around the north western half of the rear setback area. However, this will be approximately 340mm above the ground levels nominated on the plans, which remain very similar to the existing ground levels shown on the survey. Any increase to the ground levels in the rear are minor, and are not considered to have any significant impacts on neighbouring properties. Further, Council's Development Engineer has recommended a condition requiring that existing ground levels are not altered at the boundaries. The submissions are considered reasonably satisfied in this regard.

- **Pool plant / air conditioning**

Concerns were raised with respect to the pool plant and air conditioning equipment, including its location and noise impacts.

Comment:

The pool plant and air conditioning location is not nominated on the plans. A condition is recommended to ensure that no noise from plant rises above 5dBA above ambient noise levels, as measured at the property boundaries. Subject to this condition this issue is not considered to require further amendment or refusal of the application.

- **Pool overflow**

Concerns were raised with that pool overflow was not nominated on the plans.

Comment:

Pool overflow is required to be directed to the sewer. A condition of consent is recommended in this regard.

- **Kitchen Venting**

Concerns were raised that the proposed kitchen is located near the southern side boundary, and a condition was requested requiring no venting directly over the southern boundary.

Comment:

No vents or south facing kitchen windows are nominated on the plans. A condition has been included in the recommendation stating that no vent must direct exhaust directly across the side boundary. The submission is considered to be reasonably satisfied in this regard.

- **Undercroft area**

Concerns were raised that the room in the undercroft area would project noise, and if connected

to the existing undercroft would create a three storey dwelling not in accordance with the 2 storey maximum requirement in the DCP.

Comment:

The proposed lower level rumpus room is not considered to be any more likely to create a noise source than any other room in a residential dwelling. The use of this room will be generally as a part of normal residential use. It is setback 8m from the rear boundary, as required by the rear setback control. The dwelling will be no more than two storeys in height as viewed from the side elevations. The proposed rumpus room extends into the existing undercroft area, meaning that part of the dwelling will have three storeys, however, this area qualifies as a basement under the definition in the LEP, which is permitted as a variation to the number of storeys requirement under clause 4.1.2.2 in the DCP. This issue has been addressed in the relevant section of this report, and not found to result in unreasonable impacts. The submission is not supported in this regard.

- **Stormwater easement**

Concerns were raised regarding the Council pipe in the subject site, and drainage generally from the development.

Comment:

Council's Development Engineers have assessed the proposal and are generally satisfied in relation to both the Council pipe and stormwater. Conditions have been recommended requiring the creation of an easement over the pipe, and for dilapidation reporting of the Council asset. The proposal is considered generally acceptable in this regard.

- **Construction impacts**

Concerns were raised with regard to dust accumulation from construction work, and asbestos. Requests were made for a dilapidation report to be carried out by the neighbours to the north, south and rear.

Comment:

Standard conditions of consent are recommended in relation to construction work, including hours of construction and removal of asbestos. Excavation proposed is up to approximately 1.2m deep for the dwelling and 1.7m deep for the pool. The geotechnical report provided with the application did not identify any particular issues with the proposal, and did not make any particular recommendations other than following good engineering and building practice. The deepest excavation for the dwelling takes place within the foundations of the existing dwelling (in the existing undercroft area, and the excavation required for the rear extension is relatively minor (approximately 500mm). The deeper excavation for the pool is located a minimum of 6m away from the nearest neighbouring building. Given the relatively small amount of excavation proposed, recommendations of the geotechnical report, and general distance of the proposed excavation for both dwelling and pool from neighbouring buildings, dilapidation reports of surrounding dwellings are not recommended as a condition of consent in this instance.

- **Solar access**

Concerns were raised regarding the impact of the development on both southern and rear neighbours.

Comment:

Solar access has been assessed in detail under clause 3.4.1 of the Manly DCP in this report. In summary, the proposal is considered to maintain reasonable solar access to the southern

neighbour. There will be little to no impact on the rear neighbour, other than that caused by the proposed screen planting, which has been requested by that neighbour.

- **Bulk and scale**

Concerns were raised with respect to the overall bulk and scale of the development, and general non-compliance with relevant built form controls.

Comment:

The proposal will not comply with a number of the relevant built form controls, including the height of buildings development standard, wall height, and side setback controls. However, the non-compliances are all generally minor in nature, and are not considered to create unreasonable impacts to neighbours (see detailed assessments under relevant controls in this report). The overall height of the proposal will be lower than the existing neighbouring buildings to both north and south, and the side setbacks proposed generally maintain the existing setbacks, and are increased at the upper level. The overall bulk and scale of the building is considered to be consistent with existing development in the immediate and surrounding area. The generally minor non-compliances proposed will not cause it to become oversized or of a scale inconsistent with development in the area. The submissions are not supported in this regard.

- **Privacy**

Concerns were raised by the neighbours to the south and to the rear regarding privacy impacts of windows. The rear neighbours requested that the rear facing windows be made opaque. Concerns were also raised with regard to acoustic privacy, in relation to mechanical plant, and the proposed rear setback.

Comment:

The south facing ground level windows are both shown as being opaque glazing. At the upper level, the south facing windows are a wide window from the landing at the top of the stairs, opposite the stair well windows of the southern neighbour, and a slim window in the corner of a bedroom, offset from the southern neighbour's windows (stairwell and bedroom). These windows are not noted as being opaque. A condition is recommended to make the glazing of these windows opaque also, but it is not considered necessary to remove the louvres (capable of opening), given the nature of the rooms they are in, and the relationship to neighbouring windows. These are low use rooms, and will only be in proximity to other low use rooms in the southern neighbouring building.

To the rear, privacy will be adequately protected by the proposed setbacks, and the proposed screen planting along the rear boundary. The upper level windows are setback 12.5m from the rear boundary, and it is normal for a dwelling to overlook its own rear yard. Making these windows opaque is not considered to be a reasonable request. The screen planting will provide adequate screening given the distance to both upper and lower levels from the rear boundary, and that the neighbours to the rear are significantly lower, meaning the fencing will also provide screening for the lower levels. No conditions are recommended in this regard.

With regard to acoustic privacy, the proposal is for relatively normal residential alterations and additions. There is no reason to expect that any significant acoustic impact will occur, over and above what would normally be expected from a dwelling. As discussed above, conditions have been recommended in relation to noise from mechanical plant including pool filters and any air conditioning unit. Subject to these conditions, no unreasonable acoustic impacts are likely to occur.

- **Rear boundary fence encroachment**

Concerns were raised that the existing rear boundary fence is not on the boundary, and should be a minimum of 2.1m high.

Comment:

The plans indicate a new 1.8m high fence to the rear boundary. The plans also indicate a 1.8m high fence to the side boundaries. The rear fence is noted as being partly "on dwarf masonry wall" which is approximately 340mm above the ground level of the rear yard. The proposal is generally consistent with fencing requirements in this regard, and considered to generally satisfy the submission. Neighbours may negotiate with regard to boundary fences under the dividing fences act in the future.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The Arborist's Report and Landscape Plan submitted with the application are noted.</p> <p>The Arborist's Report indicates that 2 small trees are to be removed to accommodate the proposed works. The trees are not considered significant and no objections are raised to removal.</p> <p>The landscape plan indicates trees to be retained and transplanted as well as new tree, shrub and groundcover planting.</p> <p>No objections are raised to approval subject to conditions as recommended.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed DA generally complies with the flood controls in the LEP and DCP. The site is burdened by Council stormwater line. A 2-3m wide easement is proposed. The pipe is located close to the boundary fence. The flood report notes that the fence could be removed and 3m access be provided. Refer to assessment by Development Engineers.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A386387). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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	9.26m	8.94%	No
Floor Space Ratio	FSR: 0.6:1	FSR: 0.6:1	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.26m
Percentage variation to requirement:	8.94%

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 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 variation between the proposal and the building height control is minor at just 8.56% or 0.76 metres.
- The proposed variation satisfies the objectives of the underlying intent of Clause 4.3, and therefore the merits of the proposal are considered to be worthy of approval. It has been demonstrated within Council and the Courts to apply a reasonable approach in supporting variations to development standards.
- Strict numerical compliance would not necessarily result in a materially better urban design outcome and would thwart the underlying objectives of the controls.
- The proposed development will not present with excessive bulk from the public domain due to the sloping topography of the site.
- By supporting this variation to building height in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with the adjoining dwellings in the locality.
- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone.

- The proposed variation adequately satisfies the underlying objectives of the controls and will not result in any unacceptable built, natural, social or economic impacts for consideration under the Act.

The reasoning above is generally concurred with. In particular, the development will remain significantly lower than the neighbouring buildings to the north and south, despite the non-compliance. The non-compliance is relatively minor, being confined to the rear of the peak of the roof. The non-compliance will not cause any unreasonable amenity or environmental impacts to surrounding neighbours in terms of view loss, privacy impacts or solar access.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed height of the building will be lower than the neighbouring buildings to the north and south, despite the non-compliance. The non-compliance occurs at the rear of the dwelling, as the land slopes away, and is generally confined to the rear of the peak of the roof. Being located at

the rear, the non-compliance will not significantly impact on the streetscape character. The proposal is considered generally consistent with the topographic landscape, prevailing heights, and desired streetscape character in this regard.

b) to control the bulk and scale of buildings,

Comment:

The non-compliance is relatively minor, and occurs to the rear of the building, generally out of view from the public domain. It will remain lower overall than the existing neighbouring buildings to the north and south, and in this way will not present as an overly large or bulky building.

c) to minimise disruption to the following:

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

Comment:

No unreasonable view impact has been identified as part of the assessment.

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

Comment:

Solar access is considered to be maintained to a reasonable level to the southern neighbour, as discussed in the relevant section of this report. Additionally, the peak of the roof, where the non-compliance occurs, will not cause the majority of any overshadowing, as the pitch of the roof is low enough that the main shading of the neighbour to the south will be caused by the southern wall of the building.

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

Comment:

N/A

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment: The proposal is for alterations and additions to an existing dwelling, which will continue to provide for the housing needs of the community. The proposed non-compliance is considered relatively minor, and the building will be generally consistent in height and scale with the immediate neighbours.

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

Comment: The proposal will maintain the existing dwelling as a detached dwelling. No change to the housing type or dwelling density is proposed.

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

Comment: The proposal will not prevent other land uses from taking place in the zone.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 392sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm	1	N/A	Yes
	Dwelling Size: 114sqm	235sqm	N/A	Yes
4.1.2.1 Wall Height	N: 7.3m (based on gradient 1:7.5)	8.2m	12.5%	No
	S: 7.15m (based on gradient 1:9.5)	7.56m	5.73%	No
4.1.2.2 Number of Storeys	2	3	33.3%	No
4.1.2.3 Roof Height	Height: 2.5m	1.6m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Ground floor existing setback retained, new upper floor 6m, generally consistent with prevailing setbacks	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street	N: First floor: 2.73m	N: First floor: 2.6m	4.8%	No
	Ground floor:	Ground floor new works: 2.6m	4.8%	No

Frontages	2.73m	Carport: Nil S: First floor: 2.2 Ground floor new works: 0.9m	100% 12.7% 47.1%	No No No
	S: First floor: 2.52m Ground floor: 1.7m	Windows: 3m	N: 2.4m S: 0.76m	20% 74.7%
4.1.4.4 Rear Setbacks	8m	8m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS 3	Open space 55% of site area	44%	20%	No
	Open space above ground 25% of total open space	13.4%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	62%	N/A	Yes
	1 native trees	2 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	139sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.4m, 28%	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	300mm	N/A	Yes
	1m curtilage/1.5m water side/rear setback	1.35m curtilage both rear and south side 1.5m water both rear and south side	N/A N/A	Yes Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	50%	No

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

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 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
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The site and surrounding neighbours are on an east/west orientation. As such, there is a neighbour directly to the south (1 Francis St). The building at 1 Francis St is a dual occupancy development (one up one down). The living rooms of both dwellings are situated to the rear, with west facing windows, and one north facing window for each dwelling. There are also two other north facing windows from a stairwell (located centrally on the building) and a bedroom (towards the front). The existing north facing bedroom, stairwell and living room all receive the minimum 2 hours required by the control. The proposal will fail the following requirement of the control:

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);

The proposal will overshadow the bedroom window completely, located towards the front of the neighbouring building, which is permitted by the control, and will reduce solar access to the lower level north facing living room window. This window will still receive partial solar access from 2pm onwards on June 21, but this is a reduction on the existing level of solar access to that window, therefore making it non-compliant with the above requirement.

Merit consideration:

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

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

Comment:

The neighbouring building to the south is setback approximately 1.4m from the northern boundary, making it highly vulnerable to overshadowing from development generally within the applicable built form controls for the subject site. This particularly applies to the dwelling on the lower level. Despite this, the proposal will maintain at least some solar access to the north facing living room window on the lower level from just before 2pm on June 21, and will not impact on the upper level north facing living room window. Further to this, the living rooms on both levels also have west facing windows, meaning that the living room itself will receive 2 hours of solar access on June 21 (from 1pm to 3pm) as required by the control. Given the vulnerability of the lower north facing windows to any development generally within the applicable built form controls on the northern neighbour, and that the living rooms will still receive 2 hours of solar access on June 21, the proposal is considered to generally maintain equitable access to light and sunshine.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

As discussed above, the proposal will still maintain a minimum of 2 hours sunlight into the living room windows of the lower level dwelling at the dual occupancy adjacent to the south. Solar access to the private open space of the southern neighbour will also be maintained to a reasonable level, being generally unshaded from 12pm onwards on June 21. There is one bedroom window located on the lower level towards the front of the dwelling, that is highly vulnerable to two storey development on the subject site, and it is not considered a reasonable expectation to retain solar access to this window, given the applicable built form controls.

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

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

Comment:

The proposal is considered to maximise the penetration of sunlight to the neighbouring windows, living rooms and principal outdoor areas, within reasonable expectations, given the orientation of the sites and the applicable built form controls. In this case, the site is constrained by a council pipe running along the northern edge of the property, for which Council's Development Engineers require a 2.6m wide easement to be created, and which necessarily pushes development on the site to the south. Given these considerations, the level of solar access maintained by the proposal is considered generally reasonable given the circumstances of the site.

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

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)Description of non-compliance

The proposed wall height of the upper level addition will create a non-compliance on both sides. On the northern side the proposed maximum wall height is 8.2m (7.3m requirement), and on the southern side the wall height is up to 7.56m (7.15m requirement). The proposal will also be three storeys in part, where the proposed rumpus room extends into the existing undercroft of the dwelling. The area that becomes three storeys is however generally below ground level at the lower level, and fits the definition of basement area in the LEP:

"Basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing)."

The control allows a variation in this regard, stating that *Variation to the maximum number of storeys may be considered: ii) to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.*

Merit consideration

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control. This control relies upon the objectives specified within Clause 4.3 of the MLEP 2013. Accordingly, the proposal is considered against the following objectives:

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

Comment:

The proposal will remain generally lower overall than the neighbouring adjacent buildings. The non-compliances occur at the rear of the proposed new first floor, as the land slopes away, and will not have any significant impacts on the streetscape. The proposal is therefore considered to be generally consistent with the topographic landscape, prevailing height and desired future streetscape character in the locality.

1) (b) To control the bulk and scale of buildings.

Comment:

The proposed bulk of the building is generally compatible with surrounding development, and the height and scale of the development will be generally lower than the immediate neighbours to the north and south. The bulk and scale proposed is considered reasonable in the circumstances. The floor to ceiling height of the new upper level has been minimised at 2.4m, and the floor to ceiling height of the rear extension (3m) has been dictated by the existing floor to ceiling height of the ground floor.

(1) (c) To minimise disruption to the following:

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

Comment:

No unreasonable view loss has been identified as part of the assessment.

1) (d) To provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings.

Comment:

As discussed within this report under Clause 3.4 of the MDCP 2013, the proposal is considered to generally maintain a reasonable level of solar access to the southern neighbour. The non-compliant element of the southern wall (being the rear upper corner) will impact on the lower level living room window of the southern neighbour. It will not however impact on the west facing windows from that same living room, and will not impact on the upper level living room windows (north and west facing). The neighbouring lower dwelling in the dual occupancy to the south is located 1.4m from the shared boundary, and is considered to be vulnerable to overshadowing in this regard. As discussed within clause 3.4 of this report, the non-compliance with the requirements of the solar access control is minor, despite the wall height non-compliance, and the living room affected will still receive the required amount of solar access (2 hours in the afternoon on June 21) through the west facing windows, despite the impact of the development. In this regard, the proposal is considered to maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings, and is considered to achieve this objective, despite the minor non-compliance on the southern side wall.

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

Comment:

N/A

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

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

Description of non-compliance

The proposal complies with the front setback requirements. The proposal results in non-compliances with the side setback requirements on both sides. On the north side, the building will be setback 2.6m, and the carport will be on a nil setback (2.73m requirement). On the southern side, the first floor wall will be setback 2.2m (2.52m requirement), and the ground floor rear extension 900mm (1.7m requirement). Windows are also located a minimum of 2.4m from the north side boundary, and 0.76m from the southern side boundary (3m requirement).

The proposal is setback 8m from the rear boundary, which complies with the numerical rear setback requirement. Concerns have been raised by neighbours that the development does not achieve the requirement that *Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss*. It is true that the proposal will have a smaller rear setback than the immediate neighbours, (noting that there are numerous examples of similar and smaller rear setbacks than the one proposed to the north along Francis Street such as numbers 13, 15, 17, 23, 33 and more). However, the new upper level, which is where the development most impacts on overshadowing, visual privacy and view loss (although no unreasonable view loss has been identified) will be setback generally consistently with neighbouring development in the immediate vicinity. The lower level extension to the rear, which does protrude significantly to the west beyond the immediate northern and southern neighbours, is not considered to result in unreasonable amenity impacts to neighbours, and still complies with the 8m minimum numerical requirement. As such, the proposal is considered to adequately relate to surrounding development, as required by the control. Notwithstanding, an assessment has been carried out in relation to the objectives of the control below.

Merit consideration:

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

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

Comment:

At the front of the building, the proposal will generally maintain the existing side setbacks of the building, with the addition of the new carport on a nil setback. This location is the only logical location for a parking structure, given the location of the existing dwelling and driveway, and will be adjacent to the neighbouring carport, which is also on a nil side setback. The upper level will maintain the existing northern side setback of the lower level, and has increased the side setback compared to the lower level on the southern side, to minimise overshadowing impacts. The proposal is not considered to have any detrimental impact on the streetscape, and is considered acceptable in relation to this objective.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal is not considered to generally have any unreasonable impacts on privacy. The minimum 8m rear setback, combined with screen planting along the rear boundary is considered sufficient to reasonably maintain privacy to the rear. On the southern side, the proposed new laundry and bathroom windows at ground level are both opaque glazed. At the upper level, new windows are proposed adjacent to the internal stair (opposite the stairwell to the south), and a small window in the corner of bedroom 2 is proposed (this is offset from the neighbouring windows to the south). These windows are not noted on the plans as being opaque, but are louvred glass. A condition is recommended requiring these windows to be opaque glazed also. On the northern side, one new window is proposed in the ground level living area, and at first floor level, two bedroom windows and one bathroom window. The bathroom window is noted as being opaque glazing. The condition mentioned above will apply to the new northern windows also, to ensure no unreasonable overlooking impacts are caused. Subject to this condition, the proposal will not cause any unreasonable privacy concerns.

As discussed under clause 3.4.1 of the MDCP in this report, the proposal is considered to maintain reasonable solar access to the southern neighbour. The proposal includes a minor non-compliance at the upper level of 320mm to the southern side setback requirement, and a larger non-compliance at the ground level of 800mm. The first floor southern wall will impact on one north facing living room window of the southern neighbour, but solar access will be maintained to the west facing windows of this room, and to the north and west facing windows of the upper level living room. The ground level non-compliance will not impact on neighbouring windows. It will impact on the private open space (the rear yard of the southern neighbour) in terms of overshadowing, but the property to the south will still easily achieve the solar access requirements of the DCP in this regard.

The building separation is considered sufficient to enable adequate air movement. No unreasonable view loss has been identified as a result of the proposal. The proposal for alterations and additions to the existing dwelling, and the site constraint of the Council pipe running through the northern side of the property, dictate the location of the additions to a large extent. They are considered generally positive from a streetscape character point of view. The existing driveway location will also be maintained, and there will be no significant change to traffic conditions in this regard.

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

Comment:

The site is constrained by the Council pipe that runs through the northern side of the property, requiring building works to generally be located towards the southern side. The proposal includes non-compliance with the side setback control partially as a result of this constraint, and partially as a result of the slope of the land combined with the floor height of the existing dwelling. As assessed throughout this report, the proposal is not considered to result in unreasonable impacts to neighbouring properties, despite the proposed non-compliances, and a degree of flexibility is considered acceptable in the circumstances.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal will increase landscaped and deep soil area on site, and significantly increase open space area. The landscaping proposed is considered adequate.

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

Comment:

N/A

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The site is subject to a minimum 55% open space requirement. The application proposes 44% open space. However, this is an increase from the existing 27% open space on site. The proposal complies with landscaped area requirements, and floor space ratio.

Merit consideration:

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

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

Comment:

There is no identified important landscape features or remnant populations on site. The proposal will increase open space, and landscaped area on site. Planting is proposed in the rear yard to provide screening and privacy.

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

Comment:

The proposal significantly increases soft landscaped area and open space on site. Appropriate planting, including screen planting along the rear boundary is proposed.

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

Comment:

The proposal increases open space and landscaped area on site. The rear of the dwelling is to be

extended. However, the existing garage within the rear setback of the site will be removed, as well as a significant part of the existing driveway to access that structure. Sunlight, privacy and views are considered to be maintained to a reasonable level, as discussed in the relevant sections of this report.

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

Comment:

Water infiltration will increase given the increased soft surface area on site. Council's Development Engineers are satisfied in relation to stormwater.

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

Comment:

The proposal is not likely to increase the spread of weeds or degradation of any private or public open space.

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

Comment:

The site does not fall within an identified wildlife corridor. However, the increase in landscaped area on site is consistent with this objective.

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

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

Description of non-compliance

The proposal provides for only one car space (2 spaces are required by Schedule 3 of the DCP), though there will be room to park a second car on the driveway completely on the subject site. The new single carport replaces the existing single parking structure at the rear of the site. It is noted that the control allows that *In relation to the provision of parking for dwelling houses, Council may consider the provision of only 1 space where adherence to the requirement for 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity.* In this case a double carport or garage would likely have a more significant impact on the streetscape given the retention of the existing dwelling, as it would need to be located on, or close to, a nil setback to the front boundary.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed single covered space replaces the existing single space, albeit reducing the amount of parking available on the existing long driveway to access the parking structure at the rear. A second uncovered car space will be available behind the front boundary. The proposal is considered generally acceptable in this regard in relation to alterations and additions to the existing dwelling on site.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposal is for alterations and additions to an existing dwelling, and is not likely to create any significant increase in parking demand from the site. Given the existing single parking structure at the rear, and stacked parking along the driveway, would likely encourage owners to park a second car on the street where available, the new arrangement is not significantly altered.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed carport is behind the front building line, and the existing driveway location will be maintained. The proposal is considered acceptable in this regard.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed parking does not result in significant excavation.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The existing driveway is to be retained.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposal increases open space and pervious area on site, in large part through the demolition of the existing parking structure located at the rear of the site and partial demolition of the driveway. The proposal is acceptable in this regard.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The subject site is not in a centre.

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

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 \$11,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,100,000.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs

- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2020/0970 for Alterations and additions to existing dwelling including swimming pool and carport on land at Lot 4 DP 72568, 3 Francis Street, FAIRLIGHT, 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
DA00 Cover Sheet Issue J	November 2020	Watershed Design
DA02 Issue J	25.11.20	Watershed Design
DA03 Issue J	25.11.20	Watershed Design
DA04 Issue J	25.11.20	Watershed Design
DA05 Issue J	25.11.20	Watershed Design
DA06 Issue J	25.11.20	Watershed Design

DA07 Issue J	25.11.20	Watershed Design
DA08 Issue J	25.11.20	Watershed Design
DA09 Issue J	25.11.20	Watershed Design
DA10 Issue J	25.11.20	Watershed Design
DA11 Issue J	25.11.20	Watershed Design
DA12 Issue J	25.11.20	Watershed Design
DA16 Issue J	25.11.20	Watershed Design
DA17 Issue J	25.11.20	Watershed Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment J2678	28 July 2020	White Geotechnical Group
Overland Flow Assessment Report P170791	6 August 2020	Stellen Civil Engineering
Arboricultural Impact Assessment Report	14 August 2020	Blues Bros Arboriculture

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Job Ref: 20/2165 Issue E	27.10.20	Paul Scrivener Landscape

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Council Waste Management Plan	12/08/2020	Monique and Ben Jackson

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Not dated

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

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

3. Prescribed Conditions

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

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

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

- to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no

hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.
- (o) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$11,000.00 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 \$1,100,000.00.

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

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

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

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

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

6. Security Bond

A bond (determined from cost of works) of \$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.

7. Construction, Excavation and Associated Works Bond (Drainage works)

The applicant is to lodge a bond of \$ 27500 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

8. Certification of Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management For Development Policy. Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure

9. Amendments to the approved plans

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

- The landscape plan is to be amended so that screen planting extends across the entire rear boundary, with species that grow to a minimum height of 4m.
- The "adjustable privacy and solar screen" over the bathroom First Floor Ensuite window (W3.01) is to lay flat against the window (i.e. not be able to be lifted up as shown on the approved sections to create an extended pergola type structure). Alternatively the screen may be removed. The other screens above the First Floor Bed 1 west facing windows (W3.02) may be altered to match if the applicant wishes.
- The south facing First Floor windows (W3.08 and W3.09) are to be altered so that the louvred glazing is opaque.

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

Reason: To ensure development minimises solar and privacy impacts upon surrounding land.

10. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

11. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

12. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the connection to Council's stormwater pipeline which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

13. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general->

information/engineering-
specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.1

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

14. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

16. **Tree and vegetation protection**

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees and vegetation not indicated for removal on the approved plans, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation not approved for removal.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

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

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **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.

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

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

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];

- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

19. **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.

20. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

21. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

22. **Waste Management During Development**

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

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

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

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

23. **Landscape completion certification**

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

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

24. **Stormwater Disposal**

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

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

25. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be built in accordance with Council's Water Management For Development Policy.

Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure

26. **Post-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a post construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the condition of the asset after the completion of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

The post construction dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

27. **Creation of Drainage Easement Benefiting Council**

The Applicant shall create an at least 2.6 m wide easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the title in favour of Council, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

A positive covenant shall be also created to maintain the overhead structures over the easement in accordance with the standard requirements of Council.

The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services.

Northern Beaches Council shall be nominated as the party to release, vary or modify such easement and the covenant.

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

Reason: To ensure that Council pipeline have been provided with appropriate easements as required by the Conveyancing Act 1919

28. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

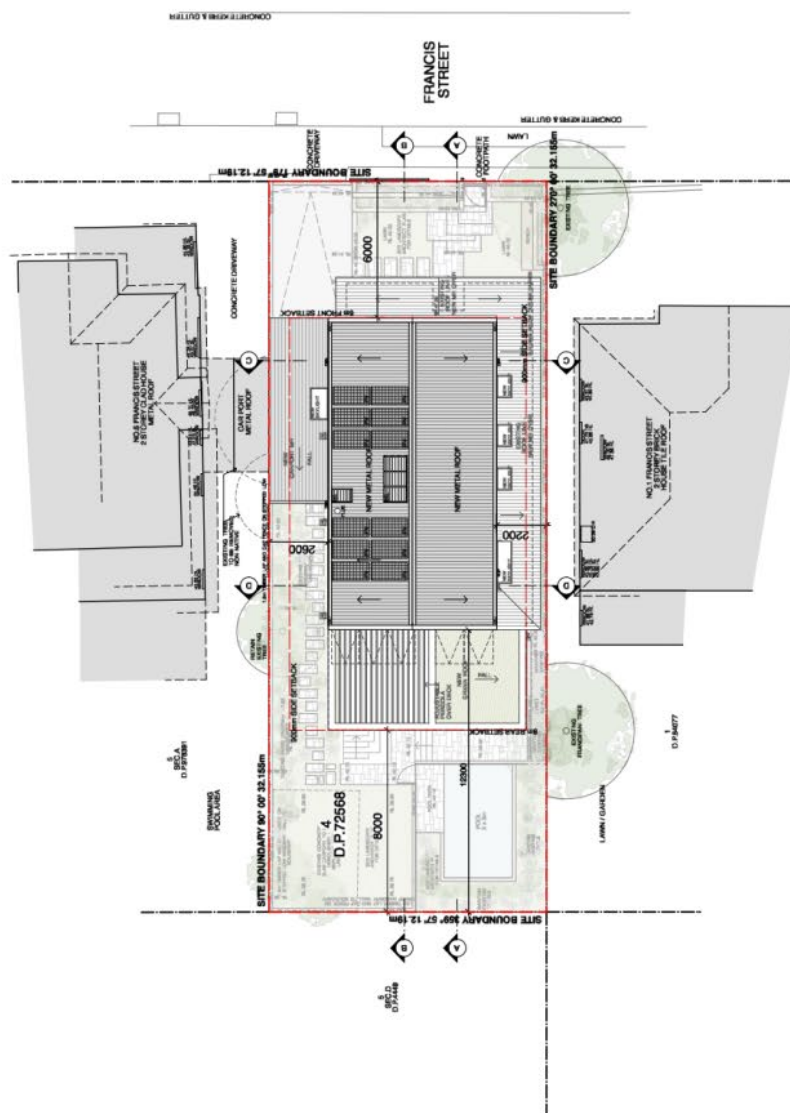
Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

29. **Kitchen Vent**

Any vent or exhaust from the kitchen is not to vent directly from the southern elevation towards the side boundary.

Reason: To minimise impacts on neighbours.



NO	AMENDMENT	DATE
D	pre DA document	28.05.20
E	pre DA information	14.07.20
F	preliminary DA issue	22.07.20
G	preliminary DA issue	06.08.20
H	final consultant issue	06.08.20
I	DA issue	18.08.20
J	DA issue	18.08.20

[illegible]

CLIENT	Ben & Monique Jackson	ADDRESS	3 Francis Street, Fairlight
PROJECT	Alterations and Additions	TITLE	Site & Roof Plan

JOB NO	19015	DRAWING NO	DA02
DRAWN	MVG	ISSUE	J
CHECKED	MK		
SCALE	1:200		



WATERSHED
DESIGN

architecture
interiors
landscapes

Phone: 02 9977 1076 Fax: 02 9976 0625 info@watersheddesign.com.au





NOTES

- Any discrepancies to be brought to the Architect's attention.
- Use figure information to inform and to clarify.
- Refer to drawings for information and alternatives.
- Refer to drawings for information and alternatives.
- Refer to drawings for information and alternatives.
- Refer to drawings for information and alternatives.
- Refer to drawings for information and alternatives.
- Refer to drawings for information and alternatives.
- Refer to drawings for information and alternatives.
- Refer to drawings for information and alternatives.

REVISIONS

NO.	AMENDMENT	DATE
1	PRELIMINARY DA	14.07.20
2	PRELIMINARY DA	14.07.20
3	PRELIMINARY DA	14.07.20
4	PRELIMINARY DA	14.07.20
5	PRELIMINARY DA	14.07.20
6	PRELIMINARY DA	14.07.20
7	PRELIMINARY DA	14.07.20
8	PRELIMINARY DA	14.07.20
9	PRELIMINARY DA	14.07.20
10	PRELIMINARY DA	14.07.20

CLIENT Ben & Monique Jackson
PROJECT Alterations and Additions

ADDRESS 3 Francis Street, Fairlight
TITLE North Elevation

JOB NO	DRAWN	CHECKED	SCALE
19015	MVG	MK	1:100

DRAWING NO DA10
ISSUE J

WATERSHED DESIGN architecture
interiors
landscapes

Phone: 02 9977 1076 Fax: 02 9976 5025 info@watersheddesign.com.au



"

NOTES



NO	AMENDMENT	DATE
D	pre DA document	28.05.20
E	issue for information	14.07.20
F	preliminary DA issue	22.07.20
G	preliminary DA issue	06.08.20
H	final consultant issue	06.08.20
I	DA issue	18.08.20
J	DA issue - Amendment	26.11.20

W **WATERSHED**
DESIGN
architecture
interiors
landscapes

Phone: 02 9977 1076 Fax: 02 9976 0625 info@waterherdesign.com.au

CLIENT	Ben & Monique Jackson	ADDRESS	3 Francis Street, Fairlight
PROJECT	Alterations and Additions	TITLE	South Elevation

JOB NO	19015	DRAWING NO	DA12
DRAWN	MVG	ISSUE	J
CHECKED	MK		
SCALE	1:100		