

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 24 MARCH 2021



Ashleigh Sherry
Manager Business Systems and Administration

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

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 16 MARCH 2021

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 16 March 2021 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

**ITEM 3.1 MOD2020/0712 - 1/834 PITTWATER ROAD DEE WHY -
MODIFICATION OF DEVELOPMENT CONSENT DA2010/0917
AND L&E COURT ORDER 10273 OF 2012 GRANTED FOR USE
OF PREMISES AS A PAY PARKING SCHEME**

REPORTING MANAGER	Lashta Haidari
TRIM FILE REF	2021/199187
ATTACHMENTS	1 Assessment Report

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** MOD2020/0712 for Modification of Development Consent DA2010/0917 and L&E Court Order 10273 of 2012 granted for use of premises as a pay parking scheme on land at Lot 1 DP 1146740, 1/834 Pittwater Road Dee Why, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0712
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 1 DP 1146740, 1 / 834 Pittwater Road DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2010/0917 and L&E Court Order 10273 of 2012 granted for use of premises as a pay parking scheme
Zoning:	Warringah LEP2011 - Land zoned B4 Mixed Use
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	DWP Commercial Pty Ltd ISPT Pty Ltd
Applicant:	ISPT Pty Ltd
Application Lodged:	04/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	10/02/2021 to 24/02/2021
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

The application seeks to amend the conditions relating to development consent DA2010/0917 and MOD2012/0014 which relate to a 'Pay Parking Scheme' at the Dee Why Grand basement car park. The application is referred to the Development Determination Panel (DDP) as it is a modification to a development consent previously granted by the ADP in 2010.

DA2010/0917 (the original consent) was determined by the Development Assessment Panel (DAP) under the former Warringah Council. MOD2012/0014 was considered by the DAP and the deferred seeking additional information prior to determination. Following the deferral, a deemed refusal was filed with the Land and Environment Court (LEC) for MOD2012/0014. This modification application was

resolved through the LEC and the conditions modified as per LEC Order 10273 of 2012. The conditions as imposed under LEC Order 10273 of 2012 are the conditions subject to this modification application.

The modification seek amend the conditions to reduce the free parking period from 3 hours to 2 hours, in line with the amended Operation Management Plan submitted with this application. The modification also seeks to increase the parking rates for the pay for parking scheme. The applicant seeks the changes to align with current economic conditions and increase the parking turnover within the pay for parking scheme.

The application has received three (3) objections during the notification period, notably regarding the reduction for the free parking period.

The applicant has provided traffic surveys and data regarding the utilisation of the car park to demonstrate a small percentage of patrons would only be impacted by the reduced free parking period. Council's traffic engineers have reviewed the proposal and do not raise concern regarding detrimental impacts upon the surrounding lands with regards to parking as a result of the reduction.

The application is recommended for approval for the reasons outlined in the report and the conditions recommended to be modified as set out in the end of the report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks to amend the conditions of consent for DA2010/0917 (and subsequently modified by MOD2012/0014, approved via the Land and Environment Court Order 10273 of 2012) for the 'Use of the premises as a pay parking scheme'.

There are no physical works sought as part of the application. The applications seeks changes to the consent conditions and accompanying Operation Management Plan as follows:

1. Amend the free parking period to 2 hours from current approved 3 hour free period.
2. Amend the parking rates applicable in the following manner:

Period	Dee Why Grand Current Fees	Dee Why Grand Proposed Fees
0 – 2 hrs	Free	Free
2 – 3 hrs	Free	\$4
3 – 4 hrs	\$2	\$6
4 – 5 hrs	\$8	\$10
5 – 6 hrs	\$16	\$16
> 6 hrs	\$22	\$22
Evening, enter after 6pm	Free (0 – 3 hrs)	Free (0 – 2 hrs)
Evening, enter after 6pm (> free parking period)	\$6.50	\$10
Overnight / Lost Ticket	\$30	\$30

3. Amend the conditions to make reference to the updated Operational Management Plan which contains the above parking rates.

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 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment
Assessment - Concurrence – NSW Roads and Maritime Services - SEPP Infrastructure (cl 104 Traffic-

generating development)

SITE DESCRIPTION

Property Description:	Lot 1 DP 1146740 , 1 / 834 Pittwater Road DEE WHY NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Pittwater Road. The site also has frontage to Pacific Parade and Sturdee Parade.</p> <p>The site is located within the B4 Mixed Use zone and accommodates the development known as the 'Dee Why Grand' which consists of a mixed use development containing a hotel, residential apartments, office space, shopping centre, and three level basement car park containing 775 spaces. Vehicular access is provided to the basement car park off Pacific Parade and Sturdee Parade.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by mixed use developments, residential flat buildings and commercial buildings.</p>

Map:



SITE HISTORY

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

- **DA2005/0463** for *Demolition of the existing Dee Why Hotel and bottle-shop buildings and construction of a mixed residential and commercial development comprising a new hotel and*

bottleshop, supermarket, retail shops, commercial offices, 235 residential units, basement carparking for 721 cars, occupation of the hotel, supermarket and bottleshop and strata subdivision, approved in 2006.

DA2005/0463 included the following condition No.143:

143. Parking Station

The off-street carparking area shall not be used as a Public Carparking Station. Also, any time limitation and charging fees for carparking is to be the subject of further development consent.

Reason: *To ensure the carparking areas within the development are not used by commuters and the like, who are not using the carparking areas for the purposes of using the facilities provided within the development. [Special condition]*

- **DA2010/0917** - 'Use of the premises as a pay parking scheme' was submitted in response to Condition 143 and this application approved by Warringah Council Assessment Determination Panel on 16 December 2010. Condition 1 set out the following including:

- a) The consent was for a 14 month trial period.
- b) Parking parking scheme to provide a minimum 3 hour free period.
- c) Set out the parking rates.
- d) 76 spaces required to be allocated for staff on Basement Level 2.

Condition 2 requires the preparation of an Operational Management Plan addressing matters (a) to (j).

- **MOD2012/0014** to the above DA2010/0917 was submitted seeking modification to condition 1 and 2, including the following:

Condition 1

- a) Delete 14 Month Trial Period
- b) Maintain 3 hour free period.
- c) Amend parking rates regards to charges due to without receipt/validation.
- d) Reduce staff parking from 76 to 37.
- e) - g) Delete conditions relating to future section 96 to amend trial period.

Condition 2

Amend the Operational Management Plan to align with the changes sought in Condition 1.

The application was heard by the Assessment Determination Panel, however was deferred for additional information with regards to the traffic and parking assessment and reduction of staff parking. Following the deferral, the applicant lodged a Deemed Refusal with the Land and Environment Court on 19 March 2012 for MOD2012/0014.

- **LEC Case 10273 of 2012** - Order was made under Land and Environment Court, **Case 10273 of 2012**, on 18 October 2012 for MOD2012/0014. The following changes were made to the consent:

Condition 1

- a) Trial Period deleted.
- b) Three hour period maintained as per original (did not seek changes to free parking period under MOD2012/0014).
- c) Parking rates removed the rate for without ticket/validation.

- d) Minimum 53 staff spaces for retail/hotel staff to be provided within the basement levels.
e) - g) Delete conditions relating to future section 96 to amend trial period.

ADD Condition 1A - Condition added which required the pay parking scheme to be carried out in accordance with the Operation Management Plan dated 25 July 2012. The OMP contains the parking rates for the pay parking scheme. The condition required the OMP can only be amended after consultation and approval by Council.

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 DA2010/0917 and MOD2012/0014, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	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 DA2010/0917 and MOD2012/0014.
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	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.

Section 4.56- Other Modifications	Comments
(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	
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2010/0917 and MOD2012/0014.
(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 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

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

Section 79C '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	None applicable.
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)(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 in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p>

Section 79C 'Matters for Consideration'	Comments
	<p><u>Clause 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to disabled parking. A response was received by the applicant clarifying the extent of change in regards to disabled parking.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/02/2021 to 24/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr David Anthony Cox	607 / 23 - 29 Pacific Parade DEE WHY NSW 2099
Mr Kaine Jason Bayfield	C/- Vaughan Milligan Development Consulting Pty Ltd Po Box 49 NEWPORT BEACH NSW 2106
The Owners of Strata Plan 83745	834 Pittwater Road DEE WHY NSW 2099

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

- The Operational Management Plan mentions decrease in disabled parking, no justification has been provided by the applicant.
- Objection to the removal of 3 hours free parking and change to 2 hours free parking. This will have a negative impact on the business and residents within the Dee Why Grand development.
- Support for increase in parking rates, post 3 hours.

The matters raised within the submissions are addressed as follows:

- The Operational Management Plan mentions decrease in disabled parking, no justification has been provided by the applicant.
Comment:
The applicant was questioned about the reference in the operational management plan which referred to changes to disabled parking. The applicant has confirmed that there is not intention to reduce or change the parking allocation including disabled parking. An updated Operational Management Plan has been submitted and will be referenced in the consent.
- Objection to the removal of 3 hours free parking and change to 2 hours free parking. This will have a negative impact on the business and residents within the Dee Why Grand development. This would increase the utilisation of on-street parking.
Comment:
The applicant has provided a a traffic and parking report which makes an analysis of the utilisation of the car park. The survey data found that only 4% users stayed in the car park between 2-3 hours. This is considered a minor amount of the total car park use, with the users in this bracket expected to either adjust their behavior accordingly to leave within 2 hours or pay for parking beyond two hours. Council's traffic team have reviewed the application and support the changes and no concern is raised regarding the impact to on-street parking.

Further, the change is considered a commercial decision by the property owner and in light of the fact Council's Traffic Team support the change and raise no concerns regarding traffic and parking impacts upon the surround locality, the reduction from 3 hours to 2 hours would not warrant refusal of the application.

- Support for increase in parking rates, post 3 hours.

Comment:

The support for the increase in rates over 3 hours is noted, and included in the amended conditions.

Council has reviewed the applicants justification for the rates of parking to be increased in line with comparable developments within Dee Why and more widely in Sydney. The rational to bring the parking rates in line with the nearby Meriton Development (the nearest comparable development) to be a reasonable proposal. The maintenance of the free 2 hour period allows parking to be reasonably provided to the various commercial, hotel and retail uses within the development and are not considered to result in a detrimental impact with regards to traffic and parking.

REFERRALS

Internal Referral Body	Comments
Traffic Engineer	<p>The proposal is to amend the free parking period to 2 hours to allow additional turnover and to stop people not using the centre to make use of the free parking and implement revised parking rates.</p> <p>No concerns is raised on the proposed reduction of free parking period from 3 hours to 2 hours. The proposed rate are subject to the responsible assessment officer consideration.</p>

External Referral Body	Comments
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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 (Infrastructure) 2007

Transport for NSW (TfNSW)

Clause 104 and Schedule 3 of the SEPP requires that the following development(s) are referred to the TfNSW as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Parking	200 or more motor vehicles	50 or more motor vehicles

Note: Under Clause 104(2) of the SEPP, 'relevant size of capacity' is defined as meaning:

"(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or

(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3."

Comment:

The application was referred to the TfNSW who did not raise any objection to the proposal.

Warringah Local Environmental Plan 2011

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

Compliance Assessment

Clause	Compliance with Requirements
7.3 Objectives for development within Dee Why Town Centre	Yes
7.4 Development must be consistent with objectives for development and design excellence	Yes
7.13 Mobility, traffic management and parking	Yes

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes

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.

Dee Why Town Centre Contributions Plan 2019

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

- Traffic and parking impacts as a result of the amended conditions.

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. Mod2020/0712 for Modification of Development Consent DA2010/0917 and L&E Court Order 10273 of 2012 granted for use of premises as a pay parking scheme on land at Lot 1 DP 1146740,1 / 834 Pittwater Road, DEE WHY, subject to the conditions printed below:

A. Modify Condition 1 'Carpark Operations' to read as follows:

- a) Deleted
- b) The pay parking scheme is to provide for a 2 hour (minimum) free parking period (applying to the first 2 hours of any stay).
- c) The Parking Rates to be applied in the operation of the pay parking scheme are to be in accordance with the schedule submitted to Council within the Operational Management Plan, prepared by PTC Consultants and dated 16/12/2020 and as described in the following table:

Length of Stay	Fee
Less than 2 hours	FREE
2 - 3 Hours	\$4
3 - 4 Hours	\$6
4 - 5 Hours	\$10
5 - 6 Hours	\$16
> 6 Hours	\$22
Evening, enter after 6pm	Free (0 - 2 Hours)
Evening, enter after 6pm (> free parking period)	\$10
Overnight / Lost Ticket	\$30

The above rates can only be amended by the applicant making an application and obtaining approval to do so under Section 4.55 of the EPA Act 1979.

- d) A minimum of 53 of the retail/hotel spaces shall be maintained exclusively for staff carparking within the basement levels.
- e) Deleted
- f) Deleted
- g) Deleted

Reason: To ensure an orderly and efficient use and management of parking facilities.

B. Modify Condition 1A '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
PTC-001, PTC-002, PTC-003, Rev P1 (Appendix 1 of Operational Management Plan)	10/12/2020	PTC Consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Operational Management Plan for Dee Why Grand Carpark prepared for ISPT	16/12/2020	PTC Consultants

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

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

**MOD2020/0232 - 29-33 PITTWATER ROAD, MANLY -
MODIFICATION OF DEVELOPMENT CONSENT DA2019/0083
GRANTED FOR ALTERATIONS AND ADDITIONS TO AN
EXISTING MIXED USE DEVELOPMENT**

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0232
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 1 DP 76807, 29 - 33 Pittwater Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2019/0083 granted for alterations and additions to an existing Mixed Use Development
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jsalt Pty Ltd
Applicant:	Jsalt Pty Ltd
Application Lodged:	02/06/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/06/2020 to 23/06/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

This modification application seeks to modify an existing consent DA2019/0083 for 'Alterations and additions to a mixed use development'. The modification application is referred to the Development Determination Panel (DDP) as it is a Section 4.55(2) Modification to a previous determination of the DDP.

The modifications involve internal floor layout changes to the commercial and boarding house component of the mixed use development. The majority of the changes relate to building services include bathrooms, lift locations and fire stair locations. Minor external alterations are proposed to compliment those internal modifications and the proposal is supported by Council's Heritage Officer with the proposed development being located within the Pittwater Road Heritage Conservation Area and in proximity to Local Heritage Items. The visual appearance of the building remains generally

consistent of that approved under DA2019/0083 and the overall height, footprint, bulk and scale of the building remains unchanged.

The proposal also seeks to allow staging of the development via modified conditions of consent relating to the development contributions applicable to the approved Third Level commercial component of the development. The staging would allow for the additional third level commercial component to be undertaken under Stage 2, with the remaining works upon existing ground floor, first floor and second floor under Stage 1. The staging of the proposal allows for the orderly and economic development of land and the relevant development contributions can be applied at the appropriate stage.

The application was notified for a period of 14 Days and no submissions were received.

The modification to the approved development is not considered to generate any additional amenity impacts and the modification results in a development that is substantially the same as originally approved under DA2019/0083. Therefore, the proposal is recommended for approval to the DDP.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to modify the existing approval DA2019/0083 which was for alterations and additions to a mixed use development. The modifications involve two components, the first being the modification to the design of the building and changes to internal layout, and the second being the proposal to modify the consent conditions to allow the development to occur in two stages.

The architectural changes to the various levels are as follows:

Ground Floor (Commercial)

- Disabled unisex toilet to be relocated
- Passenger lift has door facing east at this level.
- Fire stair to the north of the new passenger lift revised.
- Passenger lift in the south east corner of the development has been deleted.
- The awning on Denison Street has been extended west to encompass the new door to the lift lobby.
- The large shop has been extended and a dedicated toilet & sink added under the new stair up to the first floor Gym.
- Inclusion of a platform lift and steps up to the parking exit, which now discharges to Denison Street.
- The electrical room has been relocated to sit behind (west of) the disabled toilet (accessible off the delivery bay).
- Changes to shop layout and commercial space ground floor.

First Floor (Commercial)

- Passenger lift in the south east corner of the development has been deleted.
- The new passenger lift opens on the south side, directly into the general Gym area.
- Fire stair to the north of the new passenger lift to be revised.
- A small plant room has been provided at first floor level (south west corner).
- Changes to layout of commercial floor area (Gym).

Second Floor (Boarding House)

- Passenger lift in the south east corner of the development has been deleted – Bedrooms B9 & B10 are now unaffected.
- Bedrooms B3 & B4 are now to have skylights added.
- Small cooking appliances added to each bedroom.
- Communal laundry maintained and re-planned.
- The new passenger lift opens on the south side, directly into the central hallway.

- Fire stair to the north & west of the new passenger lift to be revised.

Third Floor (New Commercial Floor approved under DA2019/0083)

- Passenger lift in the south east corner of the development has been deleted.
- The new passenger lift is now between Suite 3 & Suite 4.
- All of the toilets in the commercial suites now have a shower included and the planning of the commercial suites has been revised to accommodate the overall changes.
- The skylights to the bedrooms below are shown.

Proposed Staging

The applicant seeks to amend the consent conditions to allow staging of the development to occur in the following way:

- **Stage 1** - Carry out refurbishment works and approved alterations to the existing Ground Floor, First Floor and Second Floor Levels of the existing building in accordance with the approved development consent and approved architectural plans (as amended).
- **Stage 2** - Construct the additional Third Floor Level over the existing building levels of the existing building in accordance with the approved development consent and approved architectural plans (as amended).

The following conditions are upon the consent for DA2019/0083 which are required to be satisfied prior to the issue of a construction certificate:

- **Condition 6 Development Contribution Commercial** - This consent condition requires the payment of development contributions as a result of the additional 286.3sqm floor area proposed upon the Third Floor.
- **Condition 7 Development Contribution Car Parking** - This consent condition requires the payment of development contributions for five (5) off-street car parking spaces to off-set the shortfall of car parking spaces as a result of the additional floor area generated by the Third Floor.

The proposal may be staged in way in which the applicant proposes, with the construction of the third floor not occurring until Stage 2. Council supports this approach by the applicant. Therefore, it is appropriate to amend the consent conditions to require the payment of the development contributions required under Stage 2 as required by Conditions 6 and 7. The amended floor plan for the Third Level includes an additional 5.3sqm of floor area and condition 6 will be updated accordingly to cater for the additional floor area.

The additional 5.3sqm of commercial floorspace does not generate demand for additional car parking in accordance with the DCP. See detailed discussion in the Development Contributions Referral response later in this report.

Comment on Cooking Facilities

The proposed development introduces a cooktop within each room within the existing boarding house component of the development. There are existing bench spaces and sinks within each boarding room approved under the original 1992 boarding house application. Upon review of the approved plans for DA2019/0083, bedroom 16 was relocated and replaced the existing commercial kitchen. Therefore, under the current approved plans for DA2019/0083 there are no cooking facilities for the boarding house component of the development.

A boarding house by definition under the Manly LEP allows for private cooking facilities within each room and does not necessarily require a communal kitchen. Therefore, the inclusion of a cooktop within each room is consistent with the definition of a boarding house under the Manly LEP and this component of the modification is supported. The development standards contained under Clause 30 of *SEPP (Affordable Rental Housing) 2009* do not apply to minor alterations and additions to a boarding house. The proposal is considered to consist of minor alterations to the boarding house component and therefore the standards within the SEPP do not apply.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 4.4.4.1 Awnings in LEP B1 and B2 Business Zones

SITE DESCRIPTION

Property Description:	Lot 1 DP 76807 , 29 - 33 Pittwater Road MANLY NSW 2095
Detailed Site Description:	<p>The site consists of one (1) allotment located on the western side of Pittwater Road, Manly.</p> <p>The site is irregular in shape with frontages of 14.02m along Pittwater Road and 14.325m along Kangaroo Lane, and an average Depth of 48.35m with a frontage to Denison Street. The site has a surveyed area of 665.3sqm.</p> <p>The site is located within the B2 Local Centre Zone and accommodates a three storey mixed use development. Currently the ground floor consists of commercial floor area and park, the second floor commercial floor area (gym) and the third floor consisting of an 18 room boarding house.</p>

The site is relatively level and does not include any significant vegetation.

Description of Surrounding/Adjoining Development

Adjoining and surrounding developments consist of mixed use development, commercial and residential uses. The site immediately to the south is a Heritage Building and is subject to a development consent (DA2017/1229) for construction of a mixed use development including alterations and additions and use of the heritage building as a serviced apartment and construction of a residential flat building.

Map:



SITE HISTORY

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

- **DA72/92** - Construction of an 18 Room Boarding house upon Level 2, consent granted by Manly Council on 4 June 1993.
- **DA2019/0083** - Alterations and additions to a mixed use development' was approved by the Northern Beaches Development Determination Panel on 10 July 2019. The proposal included internal alterations to the existing Ground Floor (Commercial), Level 1 (Gym/Commercial) and Level 2 (Boarding House). The proposal included a new Level 3 component consisting of 286.3sqm of additional commercial floor space.
- **Mod2019/0361** sought to correct an error in the consent and to modify conditions 12 and 21 of DA2019/0083. The modification application was approved on 31/07/2019.
- **Mod2019/0377** sought to correct an error in the consent and to modify condition 21 within the revised Notice of Determination issued on 31/07/2019. The modification application was approved on 12/08/2019.
- **DA2020/0142** was submitted for a similar proposal to DA2019/0083. This application sought the

proposal to be considered under the new Northern Beaches Contribution Plan. The application was subsequently withdrawn on 18 May 2020.

Application History

The original application included one (1) additional boarding house room. The additional boarding house room had the potential to require one (1) additional car space to be provided within the development or, require additional parking contributions. The applicant therefore chose to remove the additional boarding room from the proposal and retain 18 rooms as originally approved under the 1992 application. An amended floor plan was provided deleting the room.

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 DA2019/0083, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0083 for the following reasons:</p> <p>The general form and building envelope is maintained, with minor internal alterations only.</p> <p>The proposed land uses remain the same throughout the development, with minor changes to floor area only throughout the building.</p>

Section 4.55 (2) - Other Modifications	Comments
	The car parking arrangements and access arrangements to the building remain the same. There are no new amenity impacts introduced through the proposal.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/0083 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Environmental Plan 2011 and Manly 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.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning	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

Section 4.15 'Matters for Consideration'	Comments
instrument	on 13 April 2018. The subject site has been used for commercial and boarding house purpose for an extended period of time. The proposed development retains the existing 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 in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition 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 clause is not relevant to this application.</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	<p>Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/06/2020 to 23/06/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
NECC (Development Engineering)	The proposed modifications do not alter the original assessment by Development Engineering.

Internal Referral Body	Comments
	No objection to approval with no additional or modified conditions of consent recommended.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to heritage as the subject property is within the Pittwater Road Conservation Area, adjacent to heritage items, being Item I198 -Pair of houses - 25–27 Pittwater Road and Item I164 - Natural escarpment - Kangaroo Reserve Park and within the vicinity of a number of heritage items:</p> <p>Item I199 - Group of commercial and residential buildings - 35–49 Pittwater Road</p> <p>Item I134 - Row house - 26 Denison Street</p> <p>Item I135 - Row house - 28 Denison Street</p> <p>Item I136 - Row house - 30 Denison Street</p> <p>Item I137 - Row house - 32 Denison Street</p> <p>Item I138 - Row house - 34 Denison Street</p> <p>Item I139 - Row house - 36 Denison Street</p> <p>Item I140 - Row house - 38 Denison Street</p>
	Details of heritage items affected
	<p>Details of the conservation area and the heritage items as contained within the Heritage inventory are:</p> <p>C1 - Pittwater Road Conservation Area <u>Statement of significance:</u> Constructed between 1880 and 1963, this street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.</p> <p><u>Physical description:</u> The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures.</p> <p>Item I198 -Pair of houses <u>Statement of significance:</u></p>

Internal Referral Body	Comments
	<p>25 Pittwater Road includes a substantial single storey double fronted residence designed in the Federation Queen Anne style of architecture. 27 Pittwater Road is a small Federation style cottage. The buildings are related in scale, mass and period.</p> <p><u>Physical description:</u> No.25 Pittwater: Brick bungalow with slate roof and terra-cotta roof ornament with Federation style detailing, including timber columns and valence to verandah; steeply pitched gable roof with simple barge board and timber decoration on stucco beneath gable end. Bay window has coloured square pane fanlights and vaguely Art-Nouveau influence in window head repeated on front of building. The picket fence is not original. No. 27 Pittwater: Painted brick and tile bungalow similar in style and mass to No. 25 Pittwater but shallow pitch to gable. Special elements include the shell or fan motif in timber verandah brackets and the gable in the verandah creating a central portico.</p> <p><i>Item I164 - Natural escarpment</i> <u>Statement of significance:</u> Reserve and local streets associated by name and planning layout. <u>Physical description:</u> Natural landscape context to the Reserve together with natural rock outcrop. Significant remnant indigenous flora.</p> <p><i>Item I199 - Group of commercial and residential buildings</i> <u>Statement of significance:</u> This item is a group of unusual early Twentieth Century terraced two storey residences with shops at each end. Listed due to its originality and uniqueness of concept, layout and mixture of materials. Significance in contribution to streetscape and in relationship to late 19th century development locally. <u>Physical description:</u> Group of 8 terraced buildings comprising 6 terraced two storey houses (rendered at ground floor level and timbered first floor) with rendered two storey (projecting as one storey shops) buildings at each end. Bullnose verandah roofs to residences have reversed bullnose up to sill level on first floor. Projecting 'gable end' of roof forms pediment over central pair. Rendered pediments over shop fronts, window hoods over first floor windows, Italianate render decoration to ground floor or residences.</p> <p><i>Items I134 - I135 - I136 - I137 - I138 - I139 - I140 - Row houses</i> <u>Statement of significance:</u> A group of seven Victorian Rustic Gothic style terraces, aesthetically significant as representative of the style, and historically significant as early Manly terraces. <u>Physical description:</u> Significant elements include decorative timber barge boards, bullnose verandahs, cast iron brackets and fringes and chimney pots. Gabled corrugated iron roof, with three front facing gables, to No's.38, 32 and 26. Each gable featuring elaborate timber fretwork, and slightly curved triangular timberlouvred vent. Iron lace frieze</p>

Internal Referral Body	Comments		
	work. Corrugated iron skillion roofed verandahs elaborate drip moulds over front doors and timber framed double hinge windows to each facade.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	This site is subject to a current planning consent for a first floor rear addition, which was approved by the Northern Beaches Development Determination Panel on 10 July 2019 (DA2019/0083). Following this DA two modification applications were approved.		
	This modification application seeks consent for modifications to the approved DA2019/0083, including internal alterations and minor changes to the external configuration. Changes to the southern elevation includes rebuilding the southern boundary wall to rectify the boundary alignment. Changes to Denison Street elevation include the extension of the ground floor awning towards the west to encompass the new door to the lift lobby.		
	It is noted that the proposal does not alter the bulk and scale of the building from the approved DA and the additional impact upon the significance of the conservation area and the heritage items in the vicinity, will be acceptable.		
It is also noted that the signage is not included in this application.			
Therefore, no objections are raised to this application on heritage grounds, subject to the imposition of one condition requiring the details of the third level balustrade/handrail.			
Consider against the provisions of CL5.10 of MLEP 2013. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? No - A HIS had been provided for DA2019/0083			

Internal Referral Body	Comments
	<div data-bbox="560 423 1347 456">Further Comments</div> <p data-bbox="560 517 1347 551">COMPLETED BY: Oya Guner, Heritage Advisor</p> <p data-bbox="560 577 1347 611">DATE: 22 January 2021</p>
Strategic and Place Planning (S94 Warriewood Valley)	<p data-bbox="560 680 1347 824">The Assessment Officer has advised that the Modification Application (MOD2020/0232) seeks approval for alterations and additions to DA2019/0083 resulting in an additional 5.3sqm of commercial GFA. The modification application also seeks to stage the development as follows:</p> <ul data-bbox="560 857 1347 981" style="list-style-type: none"> • Stage 1 – alterations and additions to the existing ground floor, first floor and second floor • Stage 2 – construction of a new third floor. (comprising the additional 5.3sqm of commercial GFA) <p data-bbox="560 1010 1347 1043">Development Chronology</p> <p data-bbox="560 1072 1347 1128">There have been a number of development applications on the subject site as follows:</p> <ol data-bbox="560 1162 1347 1252" style="list-style-type: none"> 1. DA2019/0083 sought consent for alterations and additions to existing Mixed Use Development. The application was approved on 10 July 2019. <p data-bbox="560 1285 1347 1464">Conditions 6 and 7 of DA2019/0083 imposed the payment of development contributions attributable to commercial development and car parking (which is now proposed to be within Stage 2 of MOD2020/0232), in accordance with Manly Section 94 Contributions Plan 2004 (being in force on 9 Sept 2017). Condition 6 and 7 read as follows:</p> <p data-bbox="560 1498 1347 1532">6. Development Contribution – Commercial</p> <p data-bbox="560 1565 1347 1977"><i>A contribution is to be paid for the provision, extension or augmentation of traffic and parking, environmental programs, streetscape and landscaping, community facilities and administration that will, or are likely to be, required as a consequence of development in the area. Total contribution for this development for alterations and additions to an existing Mixed Use Development shall be in accordance with the contribution charges as at the date of the payment. The charges may vary at the time of payment in accordance with Council's Contributions plan to effect changes in land values, construction costs and the Consumer Price Index. This contribution shall be paid to Council prior to the release of the Construction Certificate and the amount payable</i></p>

Internal Referral Body	Comments
	<p><i>shall be in accordance with Council's Contributions Plan effective July 2009 as follows;</i></p> <p><i>The calculations for DA2019/0083 are as follows:</i></p> <p><i>\$28,036.34 per 100m² GFA in Manly CBD precinct</i></p> <p><i>Additional Floor Area = 286.3m²</i></p> <p><i>\$28,036.34 x 2.863</i></p> <p><i>= \$80,268.04</i></p> <p><i>Total Contribution applicable = \$80,268.04</i></p> <p><i>Note: Contribution fees are adjusted on the 1st July each year and are based on the March CPI figures.</i></p> <p>7. Development Contribution - Car Parking</p> <p><i>Payment of contribution in lieu of five car parking spaces which cannot be provided on a site within Zone B2 Local Centre under the Manly Local Environmental Plan 2013, shall be made in accordance with the provisions of Council's Contributions Plan 2004, pursuant to Section 7.11 of the Environmental Planning and Assessment Act 1979. The current amount of contribution for each parking space not provided on site is \$37,392.78 per space. The charges may vary at the time of payment in accordance with Council's Contributions plan to effect changes in land values, construction costs and the Consumer Price Index.</i></p> <p><i>Total contribution for this development of alterations and additions to an existing Mixed Use Development at 29-31 Pittwater Road [sic], Manly is \$186,963.90. The amount of the payment shall be in accordance with the Contribution charges as at the date of the payment and must be paid prior to issue of the Construction Certificate.</i></p> <p><i>The calculations for DA2019/0083 are as follows: 5 x \$37,392.78 = \$186,963.90</i></p> <p><i>Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.</i></p> <p>Council records indicate that at the time of preparing this referral response, the development contribution payments remain outstanding.</p>

Internal Referral Body	Comments
	<p>2. Mod2019/0361 sought to correct an error in the consent and to modify conditions 12 and 21 of DA2019/0083. The modification application was approved on 31/07/2019. The contribution conditions 6 and 7 of DA2019/0083 remained unchanged.</p> <p>3. Mod2019/0377 sought to correct an error in the consent and to modify condition 21 within the revised Notice of Determination issued on 31/07/2019. The modification application was approved on 12/08/2019. The contribution conditions 6 and 7 of DA2019/0083 remained unchanged.</p> <p>4. A separate Development Application (DA2020/0142) was lodged on 17 February 2020 for a generally similar proposal, with minor alterations to the approved form of the development. The application was withdrawn on 18 May 2020.</p> <p>5. Mod2020/0232 – the current application.</p> <p>Assessment of the Modification (MOD2020/0232)</p> <p>The modification application requests amendments to conditions 6 and 7 of DA2019/0083 to allow the contribution payment to be staged in accordance with the proposed staging of the development. The modification application also proposes an increase of 5.3sqm in the commercial gross floor area.</p> <p>At the time of original consent, 10 July 2019, the Manly Section 94 Contributions Plan 2004 was the applicable contributions plan.</p> <p>Although the Manly Section 94 Contributions Plan 2004 was repealed on 13/07/2019, MOD2020/0232 must be considered against the contribution plan in force at the time of the original determination, being the Manly Section 94 Contributions Plan 2004.</p> <p>The existing contribution condition requires payment of \$80,268.04 for commercial floorspace and \$186,963.90 for car parking. Due to the need to amend the existing contribution condition in line with the requested staging sequence and additional floor space (5.3sqm), the existing contribution condition must be updated to reflect the current CPI adjustment. This will ensure that both the original contribution and the new contribution (levied for the additional 5.3sqm of GFA) have the same base year for the purposes of the CPI calculation at the time of payment.</p> <p>It is noted that this adjustment, while increasing the contribution amount in the consent, is not increasing the required contribution above what would otherwise be required at the time of payment. It is simply bringing the base year forward for the purposes of calculating the CPI adjustment at time of payment. At the time of payment, the</p>

Internal Referral Body	Comments
	<p>CPI will be calculated from the date of consent for MOD2020/0232.</p> <p>The additional 5.3sqm of commercial floorspace does not generate demand for an additional levy for car parking. DA2019/0083 required to provide parking for an additional 286.3sqm of commercial floor space area. Parking for commercial GFA is 1 car parking space per 40sqm. Therefore, 8 car parking spaces were required for the additional GFA (7.15 rounded up to 8). Of these 8 spaces, 3 spaces were provided on-site, and the remaining 5 spaces were levied in DA2019/0083 (Condition 7). MOD2020/0232 involves 291.6sqm of GFA (5.3sqm increase). This requires parking of 7.29 spaces, also rounded up to 8. Therefore, Condition 7 of DA2019/0083 relating to parking for the commercial GFA will be unchanged (except for the readjustment of the base year).</p> <p>Based on the proposed changes and staging sequence under MOD2020/0232, changes to Condition 6 and 7 of DA2019/0083 are supported subject to the following matters being supported by the Assessment Planner:</p> <ol style="list-style-type: none"> 1. The description of the approved development clearly states this is a development in Stages, and expressly stating the description of each Stage. <p>Stage 1 – Carry out refurbishment works and approved alterations to the existing Ground Floor, First Floor and Second Floor Levels – does not involve the contribution payment to council and Condition 6 of the DA2019/0083 will be modified to the same effect.</p> <p>Stage 2 – Construct the additional Third Floor Level over the existing building levels of the existing building - will involve the payment of \$83,860.17 for additional commercial floor area and \$191,674.55 for car parking to council and Conditions 6 & 7 of the DA2019/0083 will be modified to the same effect.</p> <p>Draft conditions to replace existing conditions 6 and 7 of DA2019/0083 have been provided.</p> <p><i>Note: The contribution conditions have been determined based on current CPI figures. If this development application is not determined before 28 April 2021, contribution conditions will need to be recalculated.</i></p>
Traffic Engineer	<p>The application seeks the following significant architectural amendments;</p> <p><u>Ground Floor:</u></p> <p>The shop area at the front of the property has increased from 128m² to 133m² and the commercial space has also increased from 105m² to 109m².</p>

Internal Referral Body	Comments
	<p><u>First Floor:</u> The Gross Floor Area (GFA) at this level has reduced slightly from 601m² to 594m². This is due to the 'new' stair in the south east corner which provides access directly into the Gym.</p> <p><u>Second Floor:</u> Bedroom 19 added, with communal laundry maintained and re-planned.</p> <p>The GFA at this level has increased from 536m² to 548m². This is due to the removal of one lift and the more efficient arrangement of the stairs & new lift.</p> <p>The overall height of the approved development and the general external configuration remains consistent with the approved development originally considered by Council in its determination of DA2019/0083.</p> <p>As such, no objections are raised to the proposed alterations/additions.</p>
Waste Officer	<p>Waste Management Assessment Recommendation - approval without conditions This is a commercial building not serviced by Council Waste Management Services.</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)

Nil

Manly Local Environmental Plan 2013

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

zone objectives of the LEP?	Yes
-----------------------------	-----

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	15m	12.8m	12.8m	N/A	Yes
Floor Space Ratio	FSR: 2.5:1 (1,663,25sqm)	FSR: 2.49:1 (1654.8sqm)	FSR: 2.49:1 (1660.1sqm)	N/A	Yes
Gross floor area in Zone B2	25% Commercial GFA, maximum 1000sqm per premises	Commercial GFA: 67.7% (1,119.9sqm) No retail proposed	Commercial GFA: 67.7% (1125.2sqm) No retail proposed	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
6.4 Stormwater management	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.16 Gross floor area in Zone B2	Yes
Schedule 5 Environmental heritage	Yes

Mainly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Performance, and Water Sensitive Urban Design)		
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	No	Yes
5 Special Character Areas and Sites	Yes	Yes

Detailed Assessment

4.4.4.1 Awnings in LEP B1 and B2 Business Zones

The modifications involve a minor extension to the approved awning on Denison Street which has a height of 2.4m above ground level. The awning height was deemed suitable under the original application and the minor extension of the awning proposed under this modification application is acceptable, being consistent with the already approved height.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

- Staging of development and contributions; and
- Alterations to the layout of the building.

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. Mod2020/0232 for Modification of Development Consent DA2019/0083 granted for alterations and additions to an existing Mixed Use Development on land at Lot 1 DP 76807,29 - 33 Pittwater Road, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
PR-01, Issue D	May 2020	Alastair Robb Architects
PR-02, Issue D	February 2021	Alastair Robb Architects
PR-03, Issue D	May 2020	Alastair Robb Architects
PR-04, Issue C	May 2020	Alastair Robb Architects
PR-05, Issue D	May 2020	Alastair Robb Architects
PR-06, Issue A	May 2020	Alastair Robb Architects

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

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

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

B. Add Condition 1C 'Staging of development' under Operational Conditions to read as follows:

The development may be staged in the following way:

- **Stage 1** - Carry out refurbishment works and approved alterations to the existing Ground Floor, First Floor and Second Floor Levels of the existing building in accordance with the approved development consent and approved architectural plans (as amended).
- **Stage 2** - Construct the additional Third Floor Level over the existing building levels of the existing building in accordance with the approved development consent and approved architectural plans (as amended).

Reason: To ensure the orderly and economic development of land.

C. Modify Condition 6 'Development Contributions - Commercial' to read as follows:

Stage 2 - Development Contribution – Commercial

A contribution of \$83,860.17 for commercial floorspace is to be paid for the provision, extension or augmentation of local infrastructure that will, or is likely to, be required as a consequence this development pursuant to section 7.11 of the Environmental Planning and Assessment Act 1979 and the Manly Section 94 Contributions Plan 2004 (as amended).

The contribution shall be paid to Council prior to the release of the Construction Certificate for Stage 2. The contribution must be adjusted by CPI at the time of payment. CPI should be taken from the date of consent for MOD2020/0232.

The contribution has been determined as follows:

Total contribution applicable per DA2019/0083	\$80,268.04
CPI adjustment to Dec 2020	1.02519548
CPI adjusted total contribution for DA2019/0087 as at Feb 2021	\$82,290.43
Additional floor area per MOD2020/0232	5.3sqm
Commercial/ Retail in Manly Precinct (per 100sqm GFA)	\$29,617.62
Total contribution applicable for additional 5.3sqm	\$1,569.73
Total contribution for commercial development	\$83,860.17

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development

D. Amend Condition 6 'Development Contributions - Car Parking' to read as follows:

Stage 2 - Development Contribution – Car Parking

A contribution of \$191,674.55 for car parking is to be paid for the provision, extension or augmentation of local infrastructure that will, or is likely to, be required as a consequence this development pursuant to section 7.11 of the Environmental Planning and Assessment Act 1979 and the Manly Section 94 Contributions Plan 2004 (as amended).

The contribution shall be paid to Council prior to the release of the Construction Certificate for Stage 2. The contribution must be adjusted by CPI at the time of payment. CPI should be taken from the date of consent for MOD2020/0232.

The contribution has been determined as follows:

Total contribution applicable per DA2019/0083	\$186,963.90
5 x \$37,392.78 = \$186,963.90	
CPI adjustment to Dec 2020	1.02519548
CPI adjusted total contribution applicable per DA2019/0087 as at Feb 2021	\$191,674.55
Total contribution for Car Parking	\$191,674.55

Reason: To enable the provision of public amenities and services required/anticipated as a

consequence of increased demand resulting from the development.



Consent to build is subject to the following conditions:
1. The development must be carried out in accordance with the approved plans and specifications.
2. The development must be carried out in accordance with the approved plans and specifications.
3. The development must be carried out in accordance with the approved plans and specifications.

Date	Issue	Description
20/03/2020	A	Initial design and planning
05/05/2020	B	Revised design and planning
10/05/2020	C	Final design and planning
15/05/2020	D	Final design and planning

Parking Notes:
Existing approved parking for the building complex is located at the rear of the site. The proposed development will require additional parking spaces. The following table shows the proposed parking spaces and the associated costs.

Space	Area (sqm)	Cost (\$)
1	79	15,800
2	55	11,000
3	55	11,000
4	71	14,200

The additional commercial space proposed on the new third floor will require additional parking spaces. The following table shows the proposed parking spaces and the associated costs.

Space	Area (sqm)	Cost (\$)
5	79	15,800
6	55	11,000
7	55	11,000
8	71	14,200

On the basis that no more than 50% of the parking is permitted on site, this means that the parking actually provided on site must be at least 10 spaces. The proposed development provides for 10 spaces, which is in accordance with the requirements of the Council's parking policy.

By relocating the existing, approved parking spaces 5, we can accommodate the proposed development. The proposed development will require additional parking spaces. The following table shows the proposed parking spaces and the associated costs.

Space	Area (sqm)	Cost (\$)
5	79	15,800
6	55	11,000
7	55	11,000
8	71	14,200

With the delivery space removed from the site, we can achieve an additional parking space (space 5). The proposed development will require additional parking spaces. The following table shows the proposed parking spaces and the associated costs.

Space	Area (sqm)	Cost (\$)
5	79	15,800
6	55	11,000
7	55	11,000
8	71	14,200

Therefore, by providing three, additional parking spaces (spaces 5, 6 & 7) we can achieve an additional 11 parking spaces. The proposed development will require additional parking spaces. The following table shows the proposed parking spaces and the associated costs.

Space	Area (sqm)	Cost (\$)
5	79	15,800
6	55	11,000
7	55	11,000
8	71	14,200

The balance of 8 parking spaces would have to be addressed by the Council. The proposed development will require additional parking spaces. The following table shows the proposed parking spaces and the associated costs.

Space	Area (sqm)	Cost (\$)
5	79	15,800
6	55	11,000
7	55	11,000
8	71	14,200

Contributions:
The proposed development will require additional parking spaces. The following table shows the proposed parking spaces and the associated costs.

Space	Area (sqm)	Cost (\$)
5	79	15,800
6	55	11,000
7	55	11,000
8	71	14,200

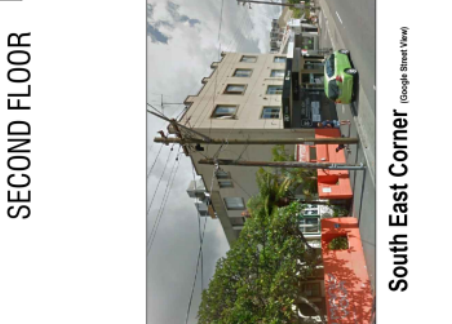
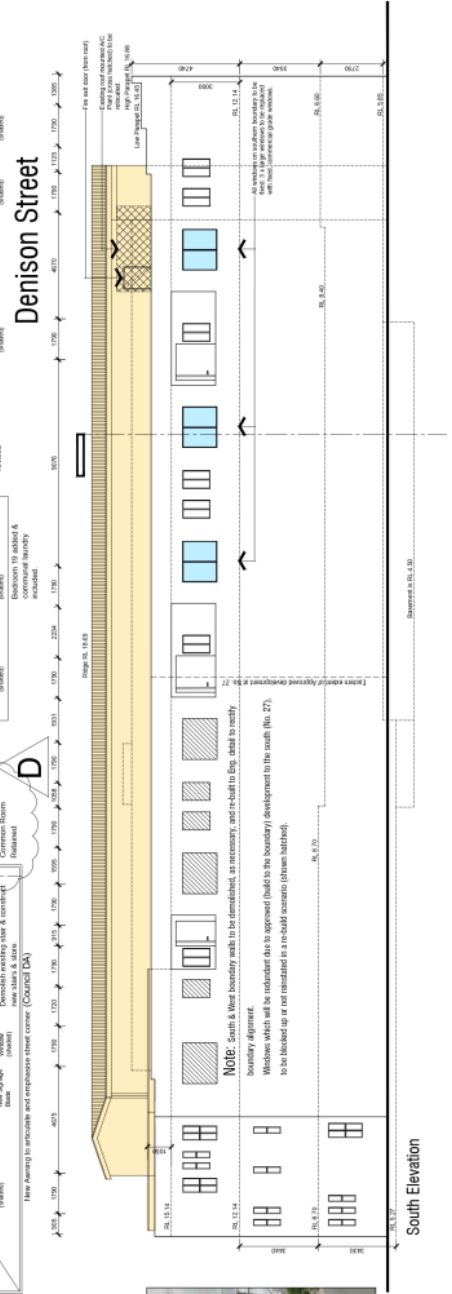
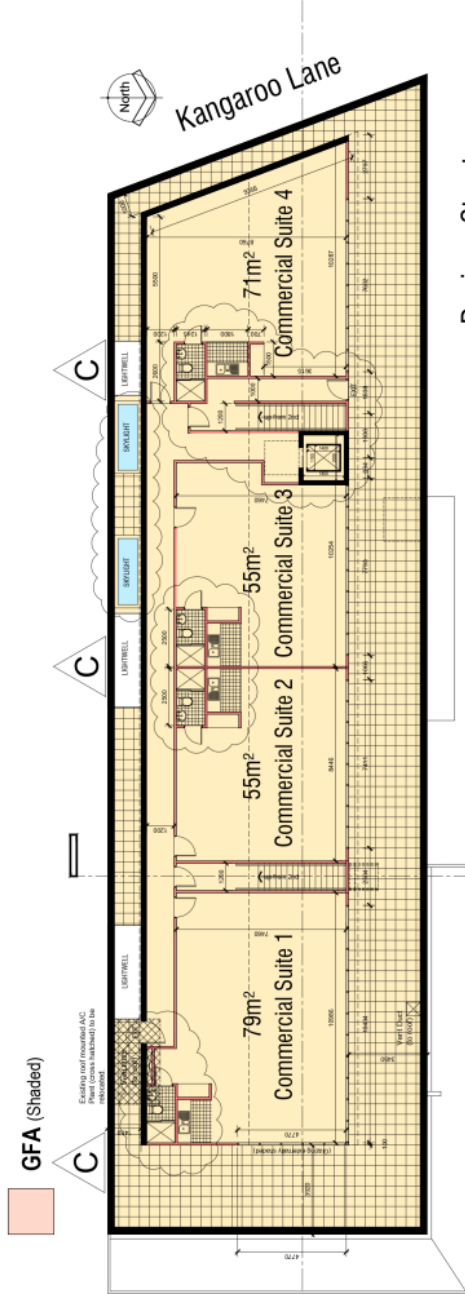
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Project
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Drawings
Floor Plans (2) +
South Elevation
SECTION 4.55 (2) MODIFICATION
Scale: 1:100
Drawing Number: PR-02
Date: Nov. 2016
Drawn by: JF
Check by: JF
Project Name: Pittwater Road Manly F103 19 2021 M4012.dwg
File Name: Pittwater Road Manly F103 19 2021 M4012.dwg

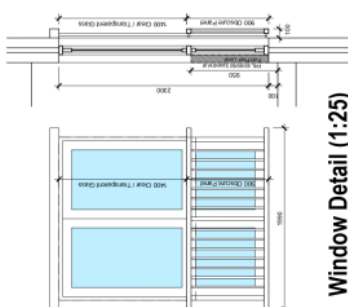


Date	Issue	Revised	Application
May 2010			
April 2013	A		High school (middle and advanced) awarded to reflect the new ground level and spanning heights. First level at level of existing ground. Second level at level of existing ground to which the 200mm step up was for basins.
July 2019	B		NAO District (NA Submission updated)
Oct 2019	C		NAO District (NA Submission updated)
May 2020	D		NAO District (NA Submission updated)

Materials & Finishes:

Existing building fabric to be retained where possible, restored where required, with elements removed and replaced (to match existing) where appropriate.

The new face brick and rendered treatment to the northern elevation is proposed to improve and 'tune' the appearance in relation to the heritage properties opposite, while presenting a more sympathetic scale to the building.



Window Detail (1:25)

Proposed window treatment to present the appearance of a natural balcony, but the lower portion of the glazing assembly is to be bold, obscure / opaque with only the upper portion to be clear, transparent / translucent with a transom set behind operable and clear / transparent (with a transom set behind the external railing). At first floor level, the lower portion of the glazing shall have an internal spandrel to achieve an FRL of 60/60/60, to 950mm high. The window detail at second floor level to include an external shading device to bedroom facade. This element is intended to provide articulation to the facade as well as order and rhythm.

alastair robb |

alastair robb
27 New Line Road
West Pennant Hills
NSW 2125

	charged
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chartered
architect

Reg. No: 6329

Reg. No: 5359
ASN: 3255 2636 626

JSALT Pty Ltd

JSALT Pty Ltd

Project Alterations & Additions

Project Alterations & Additions

29-33 Pittwater Road
Manly
NSW 2095 (LOT 1, DP 76807)

29-33 Pittwater Road
Manly
NSW 2095 (LOT 1, DP 76307)

Elevations

SECTION 4.55 (2) MODIFICATION

SECTION 4.55 (2) MODIFICATION

Scale	1:100	Original Sheet Size	A1
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Scale	1:100	Original Sheet Size	A1
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Date	Nov. 2016	Drawing Number	Issue
		001	1

Date	Nov. 2016	Drawing Number	Issue
		001	1

PR-03	D
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PR-03	D
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Post Date	May 2020

Post Date	May 2020

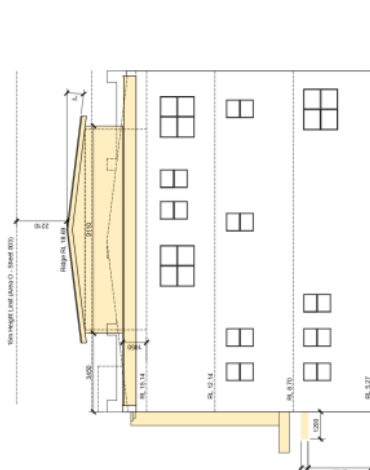
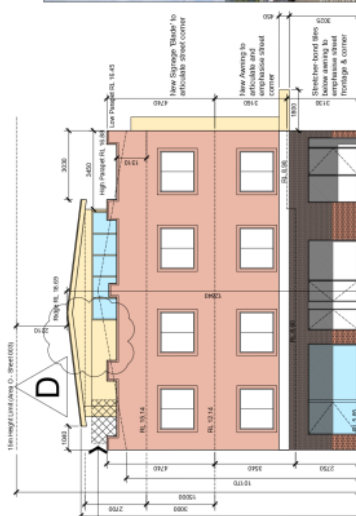


Fenestration Calculation:

Existing & Approved (1993) window areas, at 1st & 2nd Floor Levels = 54.25m²
Proposed, clear / transparent window areas, at 1st & 2nd Floor Levels (excluding obscure / opaque lower panels) = 46.4m²
Therefore, a reduction in 7.85m².



North Elevation (Proposed)



North East Corner (Google Street View)

West Elevation (Kangaroo Lane)

East Elevation (Front / Pittwater Road)

ITEM 3.3	DA2020/1478 - 291 HUDSON PARADE, CLAREVILLE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2021/199282
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Report - Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2020/1478 for Alterations and additions to a dwelling house on land at Lot 30 DP 228119, 291 Hudson Parade, Clareville, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1478
Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot 30 DP 228119, 291 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Graham Sydney Davis
Applicant:	THW Architects
Application Lodged:	23/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/12/2020 to 15/12/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 28%
Recommendation:	Approval
Estimated Cost of Works:	\$ 103,000.00

EXECUTIVE SUMMARY

The development application seeks consent for the alterations and additions to a dwelling house that involves a 28% variation to the height of buildings development standard prescribed by clause 4.3 of the *Pittwater Local Environmental Plan 2014* (PLEP 2014). As such, the development is referred to the Development Determination Panel for determination.

The additions maintain the existing approved height of the dwelling house and the topography of the site is a significant factor in the non compliance.

PROPOSED DEVELOPMENT IN DETAIL

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

works include:

Ground Floor

- Provision of a new entry, laundry, extended kitchen area and extended living room, through enclosure of the existing open terrace with internal alterations and reconfiguration together with internal access stairs to lower level.

Lower Ground Floor

- Extension of existing sitting room and new store, with internal alterations to provide for two bedrooms with bathroom and new internal stair access to the ground level above.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D3.6 Front building line

SITE DESCRIPTION

Property Description:	Lot 30 DP 228119 , 291 Hudson Parade CLAREVILLE NSW 2107
Detailed Site Description:	The subject site is known as 291 Hudson Parade, Clareville and is legally referred to as Lot 30 DP 228119. The site consists of one (1) allotment located on the southern side of

Hudson Parade, with vehicle and pedestrian access gained via a right of carriageway from Georgia Lee Place.

The site is irregular in shape with a frontage of 41.085m along Hudson Parade and a depth of 42.135m. The site has a surveyed area of 1114m².

The site is located within the E4 Environmental Living zone and currently accommodates a two (2) storey dwelling house.

The site is considered to be steeply sloping, falling approximately 35m from the southern rear boundary to the Hudson Parade frontage.

The site contains a number of existing native canopy trees and extensive vegetation throughout the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwelling houses within bushland/landscaped settings.

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:

5 February 2021

Site inspection undertaken by the assessing officer. Property owners present at the time of the

inspection. The notification sign was also in place on site at the time of the inspection.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 01/12/2020 to 15/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following biodiversity-related provisions:</p> <ul style="list-style-type: none"> - Pittwater LEP Clause 7.6 (Biodiversity Protection) - Pittwater DCP Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>The proposal is for additions and alterations within the existing building footprint. No vegetation is to be removed in the process of the development. The development complies with relevant biodiversity controls.</p>
NECC (Coast and Catchments)	The application has been assessed in consideration of the <i>Coastal Management Act 2016</i> , State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.

Internal Referral Body	Comments
	<p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated October 2020, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	No objections to approval subject to conditions as recommended.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the

External Referral Body	Comments
	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. A384494_03, dated 14 December 2020). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

Comment:

The proposed development is unlikely to cause an adverse impact to the integrity and resilience of the biophysical, hydrological (surface and ground water) and ecological environment, coastal environmental values and natural coastal process, the water quality of the marine estate, or to marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms. The proposed development does not restrict on any existing public open space or safe access along the foreshore for members of the public, including persons with a disability. The subject site has not been identified to contain any Aboriginal cultural heritage, practices of places, however, a recommended condition will be placed with the consent to ensure that if any Aboriginal engravings or relics are unearthed as part of the proposed development, works will cease immediately and the relevant authorities are notified. The proposed development is not likely to cause an adverse impact to the use of the surf zone.

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

- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The application is also supported by Council's Coast & Catchments Team. Furthermore, as detailed above, the proposed development has been designed, sited and will be managed to avoid an adverse impact on the cultural and environmental aspects referred to in Subclause (1).

14 Development on land within the coastal use area

(1)

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

Comment:

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

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

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

Comment:

The application is supported by Council's Coast & Catchments Team that considered that the proposed

development will not likely cause increased risk of coastal hazards on the subject site or other land.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.88m (2.38m)	28%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.88m
Percentage variation to requirement:	28% (2.38m)

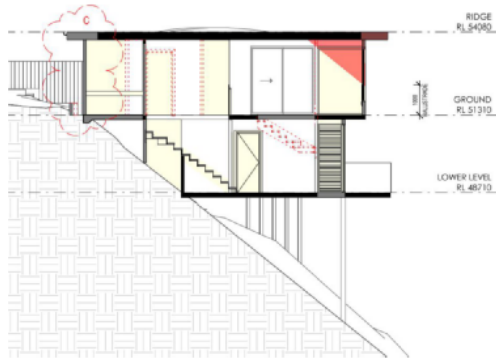


Figure 1. Annotated section plan of the proposed development demonstrating the extent of the height breach (beyond 8.5m) in red.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- The proposed additions will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl. 1.3 (c));
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the surrounding character of Hudson Parade which also promotes the orderly and economic use of land (cl. 1.3 (c));
- The proposed minor additions to the dwelling are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with Objective 1.3 (g);
- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

It is accepted that despite the variation to the height of buildings development standard, that the proposed additions do not result in unreasonable amenity impacts on surrounding properties by way of view of shadowing impacts. Recognition is also given that the general bulk and scale of the resultant development is consistent with other dwelling houses in the immediate locality, particularly when noting that the height breach largely arises as a result of the site's steeply sloping topography. It is further accepted that the proposed additions increases the residential amenity for the site's occupants, maintains architectural consistency with the existing dwelling house and that the resultant built form will be compatible with the character of Hudson Parade and not be visually dominant in nature.

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

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

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

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

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

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

proposed to be carried out

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed development is considered to be consistent with desired character of the locality, for dwelling houses to be a maximum of two storeys in any one place, involve minimal site disturbance and to achieve a balance between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. In this regard, the proposal relates to a dwelling house that appears as a single storey dwelling from the Right of Carriageway with a lower ground floor below. The height and scale of the development is also considered to be largely below the surrounding tree canopy, with a number established native Angophora Trees that range in height between 8m-15m. Consideration has also been given that the proposed development minimises the extent of site disturbance through its 'pole home' like design and no excavation being indicated as part of this application.

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

Comment:

The proposed development seeks to maintain the existing roof ridge height RL 54.080 and is no more than two stories at any point. Surrounding and nearby development are largely two storey dwelling houses that have similarly been raised in a 'pole home' like design due to the steeply sloping land in this particular area of Clareville. Despite the exceedance to the height of buildings development standard, the proposed development is considered to remain compatible with other developments in the vicinity through compliance with relevant building envelope, landscaping and side setback control requirements.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The location and overall scale of the proposed additions are seen to adequately minimise overshadowing of neighbouring dwellings. This is demonstrated by the compliance with numerical controls under the P21 DCP as they relate to solar access.

d) to allow for the reasonable sharing of views,

Comment:

It is anticipated that some adjoining properties (such as No. 293 Hudson Parade), currently have access to panoramic views across Pittwater towards the north. The proposed additions are considered to continue allowing for the reasonable sharing of views for adjoining and adjacent properties.

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

Comment:

The proposed additions do not appear to be relying upon any significant excavation into the existing landform for the development. Further, the application has been submitted with a Geotechnical Report, which has been subsequently reviewed by Council's Development Engineer, who is supportive of the proposal in this regard.

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

Comment:

The subject site is not a heritage item and is not in the vicinity of any heritage conservation areas or heritage items. It is therefore considered that there will be no adverse visual impacts caused by the proposed development. Consideration has been given that there will be minimal adverse visual impact arising from the proposed development on the natural environment, through the utilisation of dark finishes and retention of existing native vegetation on site.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

The proposed additions do not require any tree removal or rely upon any significant excavation on site, the development is seen to be designed to respond sensitively to the relevant ecological, scientific or aesthetic values that relate to the land. It is therefore considered that the proposal results in an acceptable low-impact residential development.

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

Comment:

The proposed development being for alterations and additions within the existing building footprint is not considered to have an adverse effect on the above values. Council's Bushland & Biodiversity and Coast & Catchments divisions have also reviewed the application, raising no objections of conditions to be applied in this regard.

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

and landscape.

Comment:

As previously discussed, the proposed development is contained within the existing building footprint, does not exceed two storeys or require any significant excavation or tree removal. The proposal is therefore considered to be of low density and scale integrated with the landform and landscape.

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

Comment:

The proposed development does not seek the removal of any native vegetation and it is not seen necessary to require for the planting of additional canopy trees on site. Council's Bushland & Biodiversity and Coast & Catchments divisions have also reviewed the application, raising no objections of conditions to be applied in this regard.

Conclusion:

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

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	5.7m	12.3% (0.8m)	No
Rear building line	6.5m	21m	-	Yes
Side building line	2.5m	6.3m (East)	-	Yes
	1m	4.1m (West)	-	Yes
Building envelope	3.5m	Within envelope (East)	-	Yes
	3.5m	Within envelope (West)	-	Yes
Landscaped area	60% (668.4m ²)	65.4% (729m ²)	-	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
A4.3 Bilgola Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	No	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	No	Yes
D3.7 Side and rear building line	Yes	Yes
D3.9 Building envelope	Yes	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B8.6 Construction and Demolition - Traffic Management Plan

Council's Development Engineer has placed a condition for appropriate traffic control measures to be in place during the construction phase, along with ensuring that vehicular access to private properties is to be maintained at all times.

C1.23 Eaves

No eaves are proposed to a portion of the western elevation to the dwelling house. The proposed development is of a contemporary character that is consistent with other developments in the locality. The submitted BASIX information also indicates that the appropriate level of solar access and shading would be achieved.

Based on the above, the proposed development is considered to satisfy the outcomes of the control and the non-compliance is supported on merit.

D3.6 Front building line

Requirement: 6.5m

Proposed: 5.7m

The proposed additions include the enclosure of the existing open terrace with an increased living area to the Ground Floor Level. The external northern (Hudson Parade) facing wall of this addition has been measured at 5.7m and is therefore technically non-compliant with the 6.5m front building line requirement. Despite this non-compliance, it should be recognised that the nearest point of the existing dwelling house to the front boundary is in fact on the Lower Level and remains unchanged. Consideration should also be given that the particular lot configuration results in a merit assessment of this front boundary setback, given the Right of Carriageway which intersects the lot to the south also provides the primary vehicular and pedestrian to the dwelling house.

The proposed development seen to achieve the desired future character of the locality, preserve a reasonable sharing of views and maintain vegetation to visually reduce the built form. As discussed previously in this report, the scale and height of the resultant development is seen to be consistent with the surrounding properties and not visually dominant when viewed from either Hudson Parade or the Right of Carriageway.

Based on the above, the proposal in this particular instance is considered to satisfy the outcomes of this clause and is supported on its merits.

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 \$ 515 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 103,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building

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

Accordingly Council as the consent authority grant Development Consent to DA2020/1478 for Alterations and additions to a dwelling house on land at Lot 30 DP 228119, 291 Hudson Parade, CLAREVILLE, 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
A 01, Rev. B (Site and Roof Plan)	5/11/2020	THW Architects
A 02, Rev. C (Ground Floor/Demolition Plan)	11/12/2020	THW Architects
A 03, Rev. B (Lower Level)	5/11/2020	THW Architects
A 10, Rev. B (Elevations)	5/11/2020	THW Architects
A 11, Rev. C (Elevations)	11/12/2020	THW Architects
A 20, Rev. C (Section 1)	11/12/2020	THW Architects
A 201, Rev. B (Colours)	5/11/2020	THW Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment, Ref. 6234-G1 Rev 1	10 November 2020	AssetGeoEnviro
BASIX Certificate, Ref. A384494_03	14 December 2020	THW Architects

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Council Waste Management Plan	5 November 2020	THW Architects

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	8/03/21

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$515.00 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 \$103,000.00.

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

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

6. **Security Bond**

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

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

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

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

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

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

7. **Stormwater Disposal**

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

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

8. **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 AssetGeoEnviro Pty Ltd dated 10 November 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.

9. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

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

10. **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.

11. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **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.

13. **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.

14. **Traffic Control During Road 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 (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) 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.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****15. Stormwater Disposal**

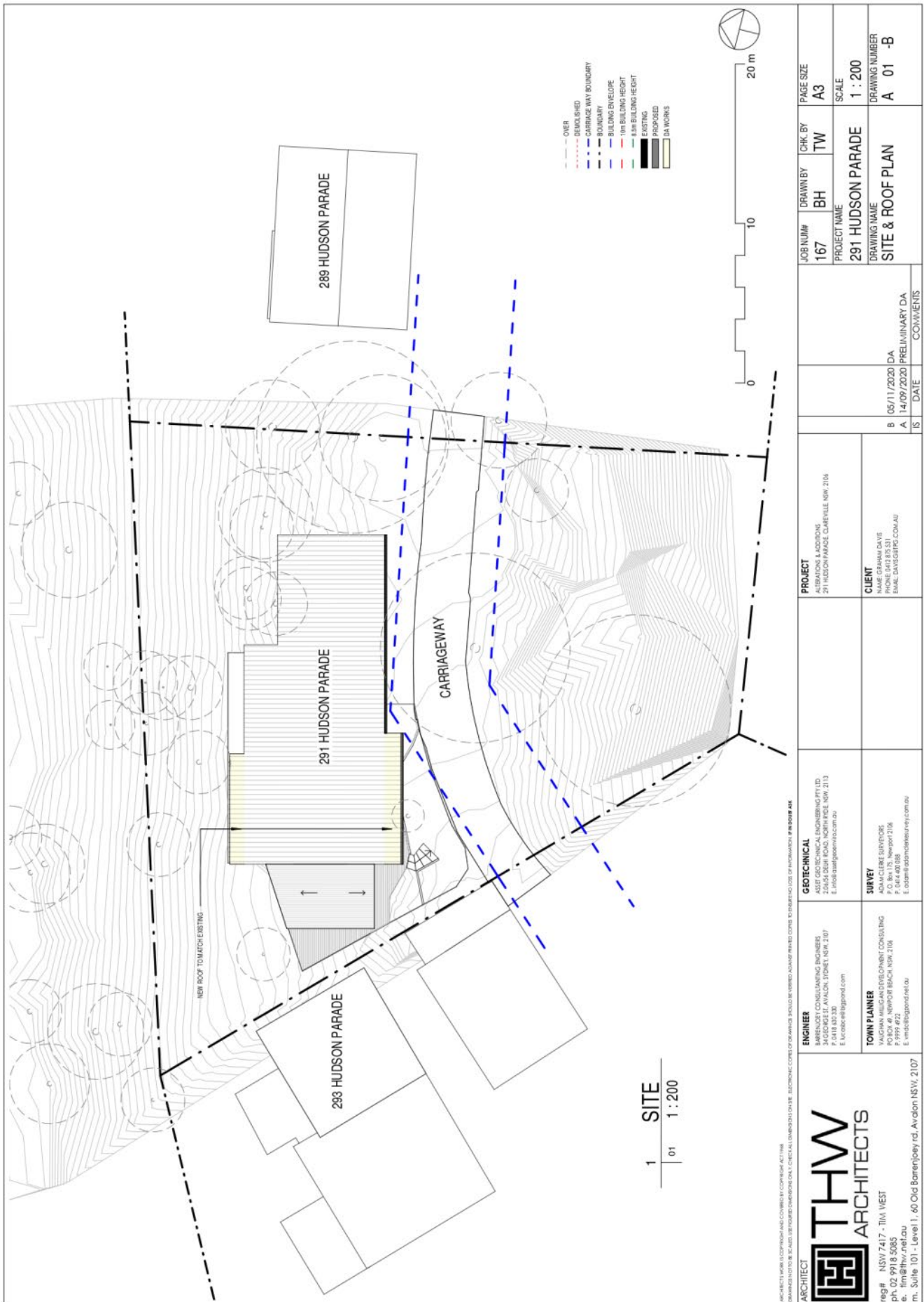
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

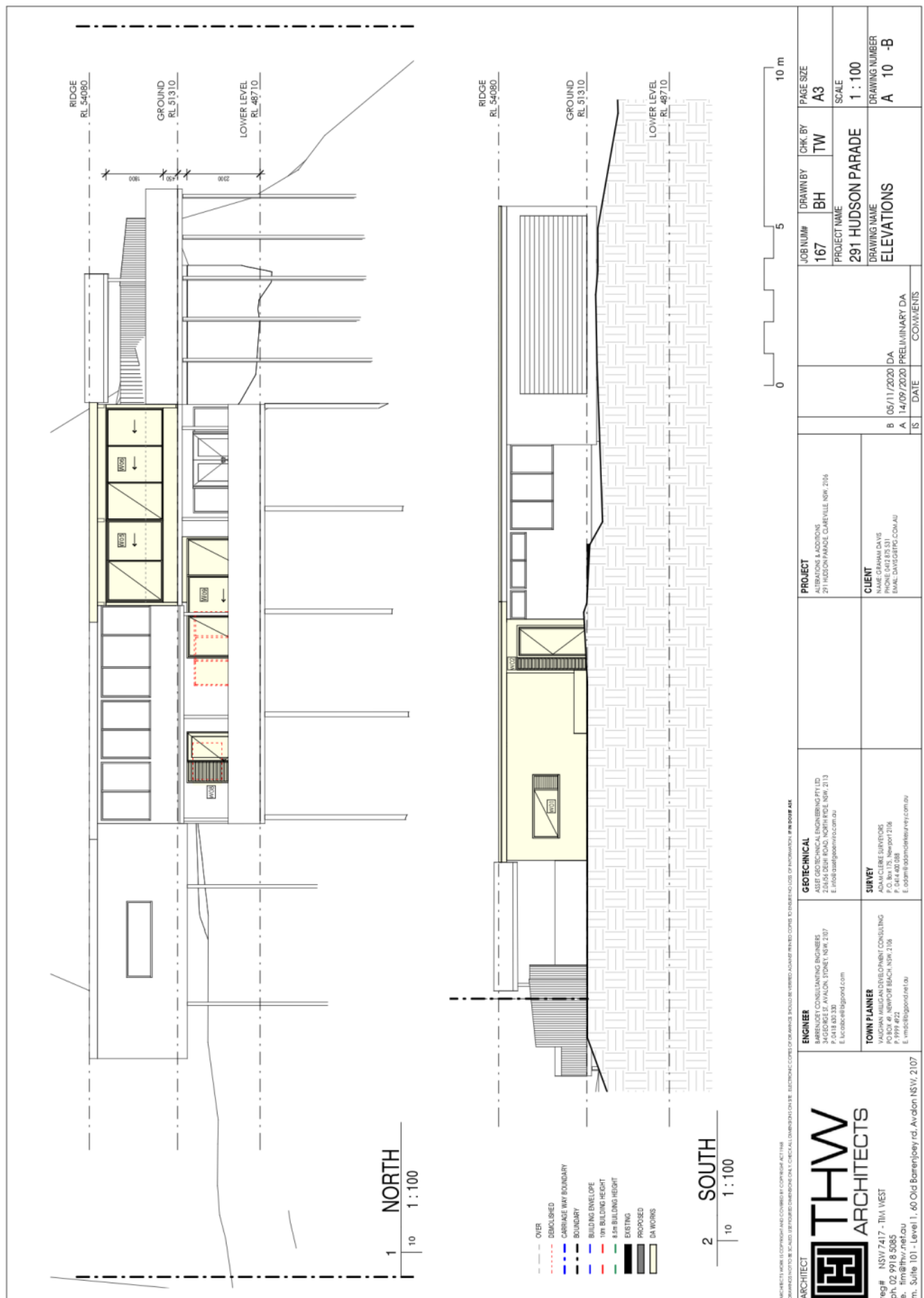
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

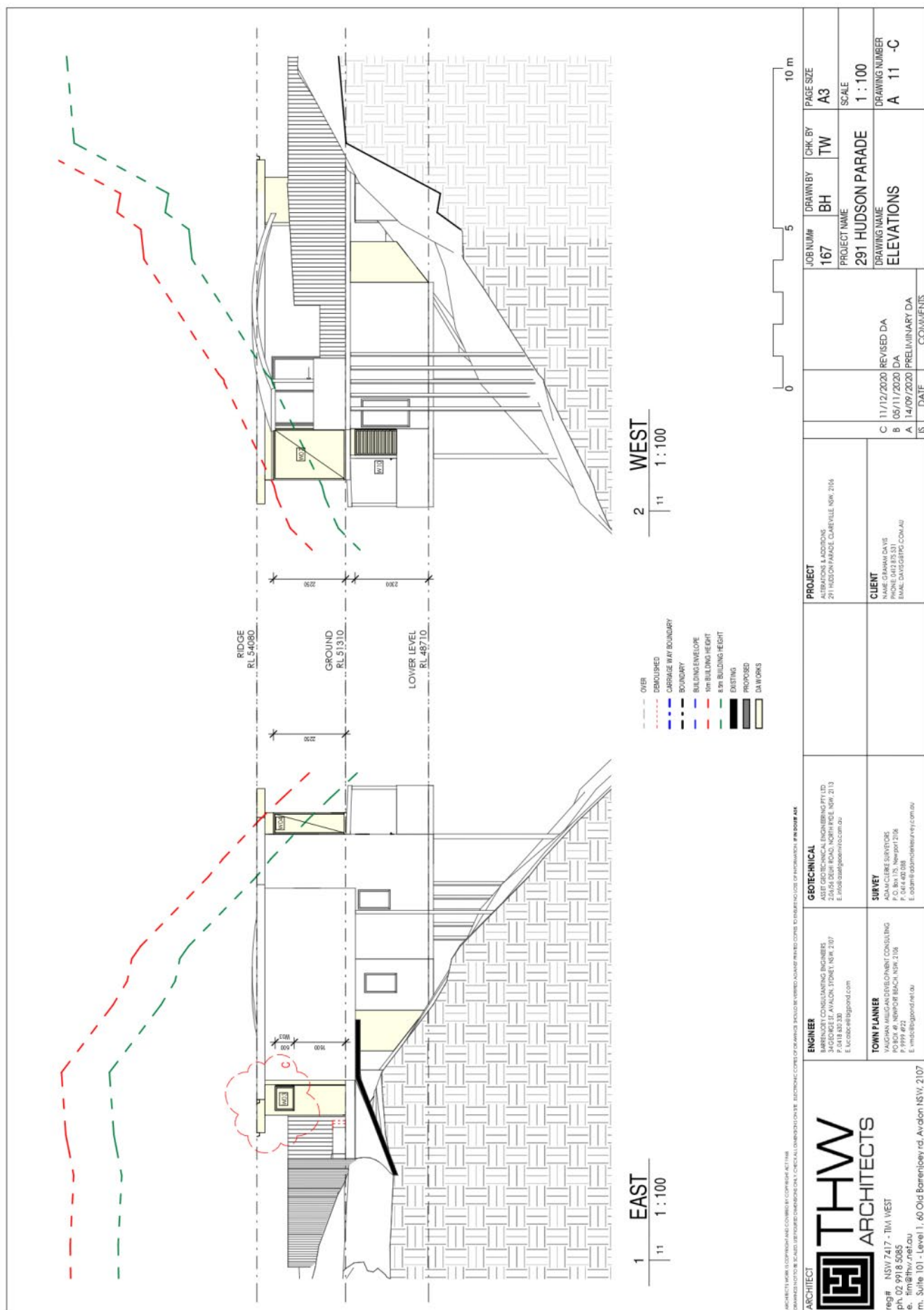
16. Geotechnical Certification Prior to Occupation Certificate

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.







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APPENDIX
CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

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WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

291 HUDSON PARADE, CLAREVILLE

FOR PROPOSED ADDITIONS & ALTERATIONS TO AN EXISTING DWELLING

For: Proposed additions and alterations to an existing dwelling
At: 291 Hudson Parade, Clareville
Owner: Graham Davis
Applicant: Tim West Architects

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 4.3 restricts the height of a building in this locality to a maximum of 8.5m. This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed additions and alterations to the existing dwelling, which as a result of the significant slope of the site will provide a height of up to 10.880m above natural ground level and which exceeds Council's maximum building height by 2.38m or 28%. The proposal therefore does not comply with Council's maximum height control. The extent of the building's roof which exceeds the 8.5 height control is detailed in Figure 1 (over page).

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is clause 4.3 of PLEP 2014 a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act includes:

"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,"

- (b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

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3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

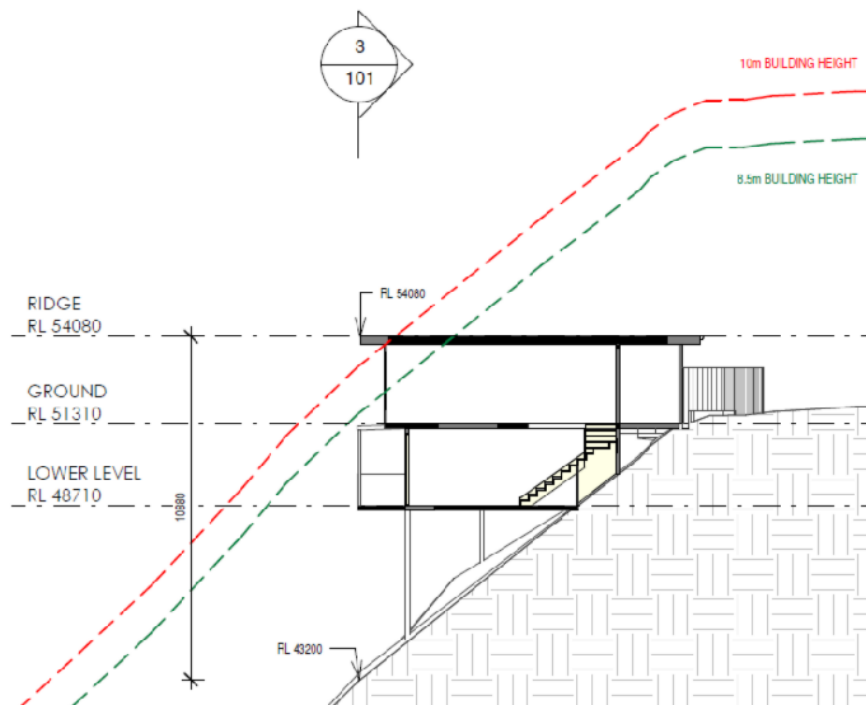


Fig 1: Section extract to indicate area of dwelling roof exceeding the 8.5m height control

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4.0 Objectives of Clause 4.6

Clause 4.6(1) of PLEP provides:

- (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.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

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

Clause 4.3 (the Maximum Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the PLEP.

Clause 4.6(3) of PLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that*

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seeks to justify the contravention of the development standard by demonstrating:

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

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Clareville. The additions to the existing dwelling will result in a maximum building height for the new work of 10.880m, which exceeds the maximum height control by 2.38m or 28%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for

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exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

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

The proposal will provide for the partial enclosure of an existing open first floor level terrace through the extension of the existing walls and roof over the space to provide for increased amenity for the site's occupants.

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The non-compliance with the height control to the north-eastern extremity of the roof over the first floor terrace for the new work arises as a result of the site's sloping topography.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed new works will not see any unreasonable impacts on the views enjoyed by neighbouring properties.

Due to the north-westerly orientation of the site and as outlined in the shadow diagram information which supports the application, the works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Hudson Parade and the wider public view of the site, together with from the surrounding private properties, will be largely maintained.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in clause 4.3 of PLEP.
- 5.2 Clause 4.3 of PLEP specifies a maximum building height of 8.5m in this area of Clareville.
- 5.3 The proposed additions and alterations to the existing dwelling will have a maximum height of 10.880m, which exceeds the height control by 2.38m or 28%.

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6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is clause 4.3 of PLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
 3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the E4 Environmental Living zone?
 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of PLEP?

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7.0. Request for Variation

7.1 Is clause 4.3 of PLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.”

- (b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

7.2 Is compliance with clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by two and three storey development, the form of which is heavily influenced by the sloping terrain of the land.

The proposal seeks to accommodate the new works within a compatible building form, with the slope of the site towards the north resulting in a portion of the new roof over the enclosed open terrace to the ground floor level and new roof over presenting a height of up to 10.880m in height.

The external form of the development follows the sloping topography of the site, which assists with minimising the visual bulk of the development.

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

The proposed height of the new works to enclose a portion of the first floor terrace will maintain a compatible height and scale with that of the surrounding development.

The proposed additions to the dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

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The proposal will not obscure any important landscape and townscape features beyond that which would be anticipated by the development of a residential dwelling, which is stepped to maintain a predominantly two storey height on the site.

Consistent with the decision of Roseth SC in *Project Ventures Developments v Pittwater Council* [2005] NSWLEC 191, it is my opinion that “most observers would not find the proposed building offensive, jarring or unsympathetic”.

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

(c) to minimise any overshadowing of neighbouring properties,

The proposed works to partially enclose the existing first floor terrace present a modest increase in building height and bulk. The extent of the proposed overshadowing is reflected in the shadow diagrams prepared by Tim West Architects which note that the minor increase in overshadowing does not materially affect the primary living spaces and outdoor areas of the adjacent neighbour to the south west.

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

The proposed new works are located at the ground floor terrace level, with the primary views for the surrounding properties being more directed towards the north and across the face and the lower levels of the current dwelling. The opportunity for the adjacent neighbours to continue to retain suitable views across the site towards Pittwater will be maintained.

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

The proposal involves very minor changes to the existing building, including the enclosure of a portion of an existing ground floor terrace. The floor levels of the dwelling will continue to step down the site and as the primary outlook for the adjoining neighbours is retained, and the building will continue to present a compatible bulk and scale, the works are considered to respond sensitively to the natural topography.

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

The proposed works will not see any further site disturbance, or loss of landscaped area. The site does not join any sites of heritage significance and the proposal is considered to be reasonable in this portion of Clareville.

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

In Initial Action the Court found at [23]-[24] that:

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

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient*

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environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

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

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed additions will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the surrounding character of Hudson Parade which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed minor additions to the dwelling are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).
- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

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As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E4 Environmental Living Zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the E4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the breach of the maximum building height which as a consequence of the substantial slope of the site towards the north resulting from the enclosure of the existing ground floor terrace with new roof over, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environment or Living Zone for the following reasons:

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

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The proposal provides for modest alterations and additions including the enclosure of a portion of an existing ground floor terrace in a manner which will retain the single dwelling character of the site and the immediate area.

The site and its location in Hudson Parade is considered to be an area of special visual and aesthetic value.

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The external form of the development is stepped with the sloping topography of the form, which will reduce the visual bulk of the development.

Further, the modulation of the front façade and side elevations, together with the increased side setbacks to the upper level will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and will not be a visually prominent element in the area.

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

The design prepared by Tim West Architects has been prepared to meet the client brief, together with ensuring that the visual bulk and overall height of the dwelling is effectively managed.

The design is considered to be an improvement in terms of the building's appearance and visual impact and for these reasons, the development does not result in an adverse impact on the special aesthetic values of the site.

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

The proposal provides for the enclosure of a portion of an existing open first floor terrace with an extension of the existing walls and a level roof over the space.

As the design utilises increased setbacks for the upper floor relative to the lower levels and a compatible colour palette is provided, the building respects the predominant scale of development in the locality.

The setbacks are compatible with the existing surrounding development and the proposal does not have an adverse impact on long distance views.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

7.5 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of PLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the

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proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

7.0 Conclusion

This development proposes a departure from the maximum building height control, with the proposed new works to partly enclose the existing ground floor terrace to provide for a height of up to 10.880m.

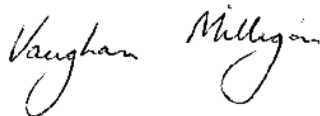
This variation occurs as a result of the sloping topography of the site and siting of existing development.

This written request to vary the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of PLEP 2014 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.4	DA2020/1338 - 55 BOWER STREET, MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2021/199339
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Report - Clause 4.6 4 View Loss Addendum

PURPOSE

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

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuses** Development Consent to DA2020/1338 for Alterations and additions to a dwelling house on land at Lot 63 DP 8075, 55 Bower Street, Manly, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1338
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 63 DP 8075, 55 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Scott James Lockett Amanda Dagmar Lockett
Applicant:	Gabrielle Pelletier
Application Lodged:	27/10/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/02/2021 to 04/03/2021
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 15.3%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 2,504,117.00

EXECUTIVE SUMMARY

Council is in receipt of development application DA2020/1338 seeking consent for alterations and additions to the existing dwelling at 55 Bower Street, Manly.

The site is zoned E3 Environmental Management under the provisions of Manly Local Environmental Plan 2013 (MLEP 2013) and the proposed development is permissible with consent.

The notification of the application resulted in four (4) submissions from residents of Montpelier Place, raising concerns with regard to the proposed building height non-compliance and view loss. The applicant was provided an opportunity to address these concerns, and amended plans were presented to Council. With a maximum height of 9.8m, the amended proposal remains non-compliant with the

8.5m maximum building height prescribed by MLEP 2013 and the height controls of MDCP 2013, and the non-compliant element of the proposal is not without impact.

The application was supported by a detailed clause 4.6 submission requesting a variation to the maximum building height prescribed. However, the submission does not demonstrate that compliance with the height plane is unreasonable or unnecessary in the circumstances of this application, nor does it provide sufficient environmental planning grounds to justify non-compliance with the building height development standard.

The impact associated with the non-compliant built form, specifically the proposed upper floor, is unreasonable and the objectives of the relevant standards and controls are not achieved. As such, the application is recommended for refusal.

As the cost of works exceeds \$1 million, and as more than 3 submissions were received, the application is referred to the the Development Determination Panel for determination. The matter is also required to be determined by the Development Determination Panel as the proposal involves a variation to a development standard of more than 10%.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling to accommodate:

- enlargement of the existing garage and relocation of the driveway and driveway crossing,
- enlargement of the existing living area and entrance, alterations to the bathroom and laundry, and the construction of new front balconies on the lower ground floor,
- enlargement of the existing living, kitchen and dining area, alterations and expansion of the front and rear balconies, removal of master bedroom and ensuite to be replace by a guest bedroom,
- construction of a new upper floor comprising a master suite, study and front balcony.

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 - Zone E3 Environmental Management
 Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 63 DP 8075 , 55 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The site is slightly irregular in shape, with a 11.675m wide frontage to Bower Street to the north, a 15.275m wide frontage to Montpelier Place to the south, a maximum depth of 45.875m and a total area of 698.8m². A three storey dwelling is located centrally and a swimming pool located in the south-west corner of the site. Vehicular access is gained via Bower Street, with pedestrian access to both Bower Street and Montpelier Place. The site experiences a fall of approximately 8.8m and a slope of approximately 19%.</p> <p>The site is surrounded by low density residential development, with significant and expansive views obtained from the site and over the site by properties up slope.</p>

Map:



SITE HISTORY

Background of the site

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

Background of the application

On 27 October 2020, the subject application was received by Council and was notified in accordance with Council's Community Participation Plan.

On 27 January 2021, Council wrote to the applicant to advise of concerns relating to the proposal, including those in relation to:

- Building height non-compliance,
- View loss, and
- site stability.

On 12 February 2021, amended plans were received.

On 18 February 2021, a geotechnical risk management report and height pole certification were received.

On 4 March 2021, an amended clause 4.6 submission was received.

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. If approved, these matters will be 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 height of the development and the resultant impact upon views.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent</p>

Section 4.15 Matters for Consideration'	Comments
	<p>authority to consider AS 2601 - 1991: The Demolition of Structures. If approved, this matter will be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. If approved, this matter will be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). If approved, this matter will be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development, specifically the top floor additions.
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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the MLEP 2013 and MDCP 2013 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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 18/02/2021 to 04/03/2021 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 Sylvia Smart Mackenzie Mr James Fraser Mackenzie	17 Montpelier Place MANLY NSW 2095
Mr Steven John Macdonald	18 Montpelier Place MANLY NSW 2095
Mr Linden Rex Brown Mrs Marie-Noelle Brown	16 Montpelier Place MANLY NSW 2095
Mr Chris Mitchell	20 Marlborough Avenue FRESHWATER NSW 2096
Ms Julie Anne Wilding	19 Montpelier Place MANLY NSW 2095

The submissions received from residents of Montpelier Place raise concern with regard to the height of the proposed development and the impact upon views currently enjoyed from each respective dwelling. In respect to each submission, it can be confirmed that the objection regarding height is limited to the proposed upper floor of the development that comprises the master suite.

As discussed in detail with respect to clause 4.3 (Height of buildings) of MLEP 2013 and clause 3.4.3 (Maintenance of views) of MDCP 2013, the proposed height non-compliance directly attributes to unreasonable impacts upon views currently enjoyed from nearby properties, and the proposal is not supported in this regard.

The submission received from the Marlborough Avenue resident was in support of another submission that was made in error and subsequently withdrawn. The author of this submission has also confirmed that their concerns have been satisfied.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported, with conditions.</p> <p>The Landscape Plans submitted with the application are noted.</p> <p>The Proposal incorporates removal of 3 small trees/shrubs in the front yard to accommodate the proposed works. The landscape plans indicate replanting to the front yard capable of replacing the removed vegetation.</p> <p>No objections are raised to approval subject to conditions as recommended.</p>
NECC (Bushland and Biodiversity)	<p>Supported, with conditions.</p> <p>The proposal has been assessed against the following provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 (BC Act)

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Manly LEP Clause 6.5 (Terrestrial Biodiversity) Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands) Manly DCP Clause 3.3.1.iv (Landscaping in Bandicoot Habitat). <p>The property is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head; as such, the development is to be accompanied by a 'test of significance' prepared in accordance with Section 7.3 of the BC Act. An ecological impact assessment with test of significance for the endangered bandicoot population has been submitted with the DA and concludes that the proposal will not have a significant impact on the population. Given that the proposal is generally within the existing footprint, Council's Biodiversity referral body concur with this conclusion, subject to recommended conditions to maintain bandicoot access and mitigate construction-related impacts.</p>
NECC (Development Engineering)	<p>Supported, with conditions.</p> <p>Development Engineering has no objection to the application subject to the following conditions of consent.</p>
Strategic and Place Planning (Heritage Officer)	<p>Supported, without conditions.</p> <p>The proposal has been referred to Heritage as the subject property is located opposite a heritage item</p> <p>186 - House at 50-52 Bower Street.</p> <p>The proposal seeks consent for alterations and additions to the existing dwelling. The heritage item is located to the north east of the subject property across Bower Street. Given the separation afforded by the road, the proposal is considered to not impact upon the heritage item or its significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A381760_02 dated 15 February 2021). Should the application be approved, a condition can be included requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Coastal Management) 2018

The site is identified as being within the Coastal Use Area under the provisions of State Environmental Planning Policy (Coastal Management) 2018 (**CM SEPP**), and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 14 and 15 of this policy.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.8m	1.3m or 15.3%	No
Floor Space Ratio	0.45:1	0.445:1	-	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	No
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone E3 Environmental Management

The proposal is considered against the objectives of the E3 zone, as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment: The proposed development does not result in any adverse impacts upon the ecological, scientific, cultural or aesthetic values of the E3 zone.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment: The proposed development does not result in any adverse impacts upon the ecological, scientific, cultural or aesthetic values of the E3 zone.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment: The proposal will not result in an adverse impact upon tree canopy, and the proposed dwelling is a low impact residential use that is anticipated within the zone.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment: The proposal does not negatively impact upon nearby foreshores, significant geological features or bushland.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment: The subject site is not located immediately adjacent to the foreshore, and as such, rehabilitation is not reasonably requested or required. The impact of stormwater run-off is appropriately ameliorated by the existing stormwater system.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment: The proposal does not have adequate regard for the topography of the land, which falls both from the south towards the north, and from the west towards the east. The height of the proposal may be consistent with that of adjoining development to the west, however the site is lower than the adjacent land, and as such, the height of the development should also be reduced. Furthermore, the request to mimic the height of adjoining development is also questionable when the proposal also benefits from existing excavation, with an additional storey presenting to Bower Street.

Whilst generally consistent with the objectives of the E3 zone, the proposal fails with regard to the objective that associates building height with the topography of the land.

4.3 Height of buildings

and clause 4.6 Exceptions to development standards

With a maximum height of 9.8m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of MLEP 2013. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of MLEP 2013 can be applied.

Pursuant to clause 4.6(2) of MLEP 2013, consent may be granted for development even though the development contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause not not apply to those standards expressly excluded, the maximum building height is not expressly excluded and thus the clause can be applied in this instance.

Extent of height breach

The proposed development reaches a maximum height of 9.8m, representative of a 15.3% variation of the 8.5m development standard. However, the height breach is not limited to one location, and assessing officer's calculations differ from those nominated in the architectural plans. The clause 4.6 submission identifies that this discrepancy in the calculations arises as follows:

The levels of the site have been artificially modified as a result of the construction of the existing dwelling house and associated landscaping which has seen some areas excavated into rock and other excavated areas supported with rough rock and stone retaining walls. This makes an accurate assessment as to the height of the proposed development above unmodified levels across the site challenging. The diagram at Figure 1 shows an 8.5 metre height blanket projected above interpolated unmodified levels. The interpolation of levels is generated by the computer software based on the spot levels contained on the survey with such methodology normally adopted when generating height blanket diagrams.

That said, a more conservative approach sometimes adopted by Council assessment officers in terms of identifying the extent of building height breach is to identify the spot levels located immediately below the proposed roof elements based on available survey information. Whilst I disagree that this is a fair and reasonable assessment approach given that it significantly disadvantages proponents seeking approval for works on sites containing highly modified landforms, with such approach often leading to a disparate height relationship between surrounding development, for abundant caution, I have also undertaken an assessment using this methodology.

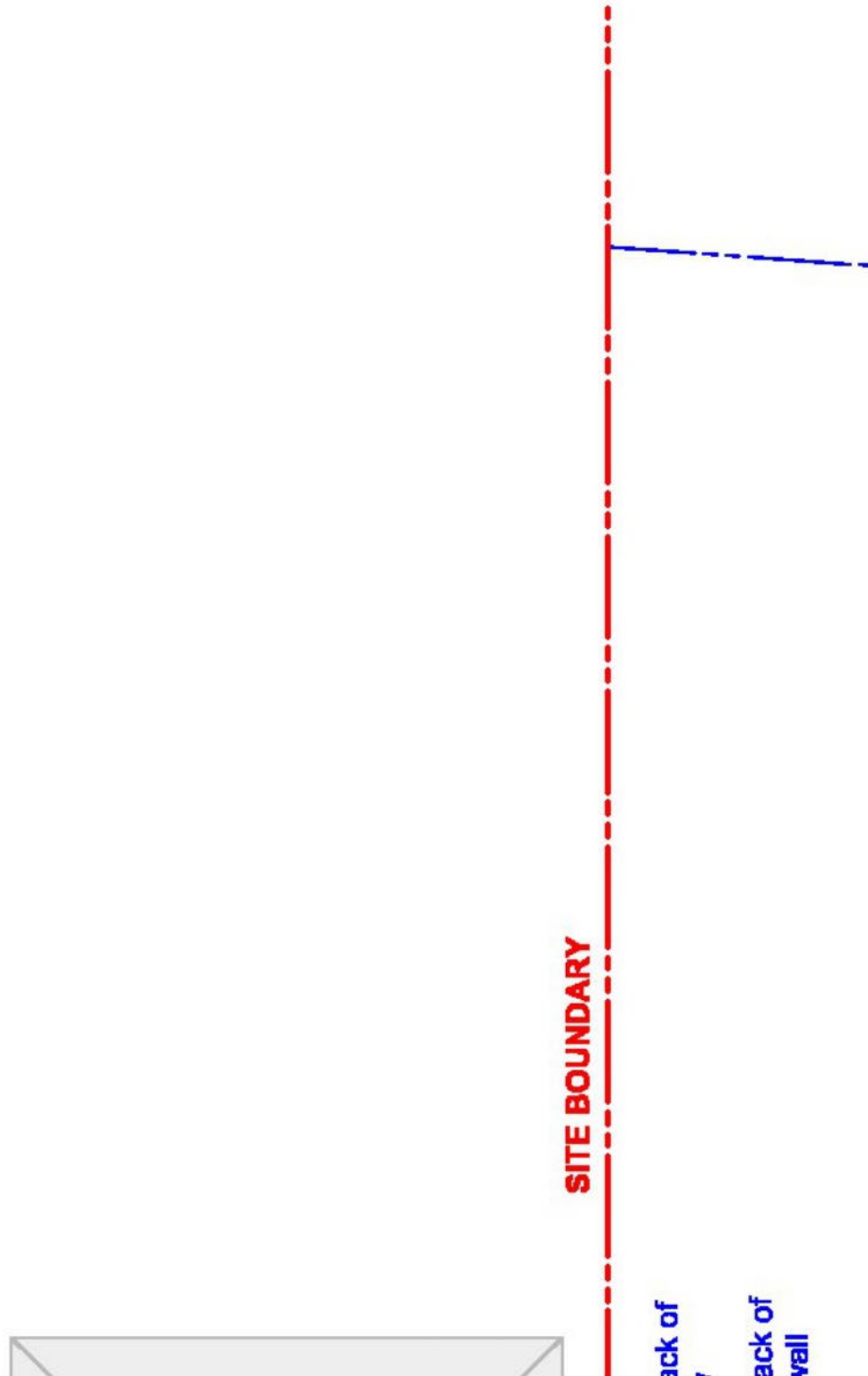
It is appreciated that relevant case law provides that extrapolation is acceptable when ground levels are unable to be determined, such as areas beneath a basement. In such circumstances, as pointed out by the applicant, ground levels should be determined with regard to known levels around the building and on adjoining sites based on actual and surveyed levels. The survey supporting the application does not provide ground levels for adjoining sites but provides a number of points along the common boundary and around the perimeter of the building. Whilst it is apparent that the lower ground floors extend below these surveyed levels, there is no suggestion that the levels surrounding the footprint of the building cannot or should not be relied upon to calculate the resultant height of the building.

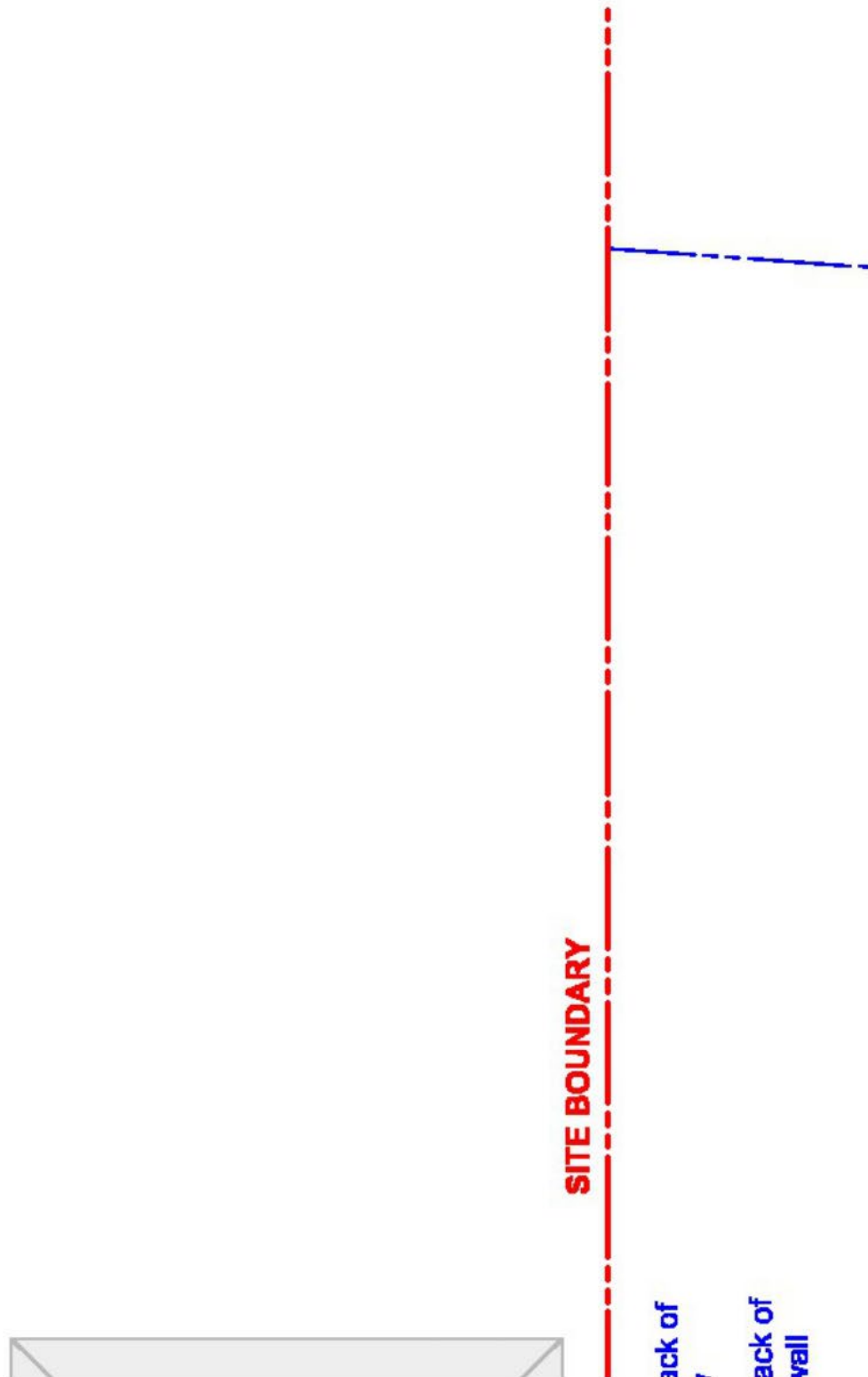
The methodology for assuming ground levels used in the architectural drawings is still somewhat unclear, however the suggestion that surveyed ground levels around the existing building and along side boundaries should be ignored in favour of an approximated ground plane developed by the architect is not supported.

The areas of height non-compliance determined by the assessing officer, in relation to the points shown on **Figure 1**, can be identified as follows:

1. The south-eastern corner of the upper floor roof reaches a height of 9.6m. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL41.04 (roof) - RL 31.44 (ground) = 9.6m).
2. The north-eastern corner of the upper floor roof reaches a height of 9.8m. The assessing officer relies upon extrapolation below the existing building, based on survey levels on either side of the building. The applicant nominates a maximum height of 9.6m at this point and also relies upon extrapolation below the existing building, however the ground lines depicted on the architectural drawings do not correlate to the survey detail (spot levels) provided.
3. The north-western corner of the upper floor roof over the bedroom reaches a height of 9.315m. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL40.645 (roof) - RL 31.33 (ground) = 9.315m).
4. The midway point of the western portion of the upper floor roof reaches a height of 9.46m. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL40.94 (roof) - RL 31.48 (ground) = 9.46m).
5. The north-western corner of the upper floor roof over the ensuite reaches a height of 8.89m. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL40.94 (roof) - RL 32.05 (ground) = 8.89m).
6. The north-eastern corner of the pergola roof over the ground floor front balcony reaches a height of 8.87m. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL32.74 (roof) - RL 28.87 (ground) = 8.87m).
7. The north-western corner of the pergola roof over the ground floor front balcony reaches a height of 8.92m. The assessing officer relies upon nominated spot levels on the survey below the proposed roof (RL32.74 (roof) - RL 28.82 (ground) = 8.92m).

x1





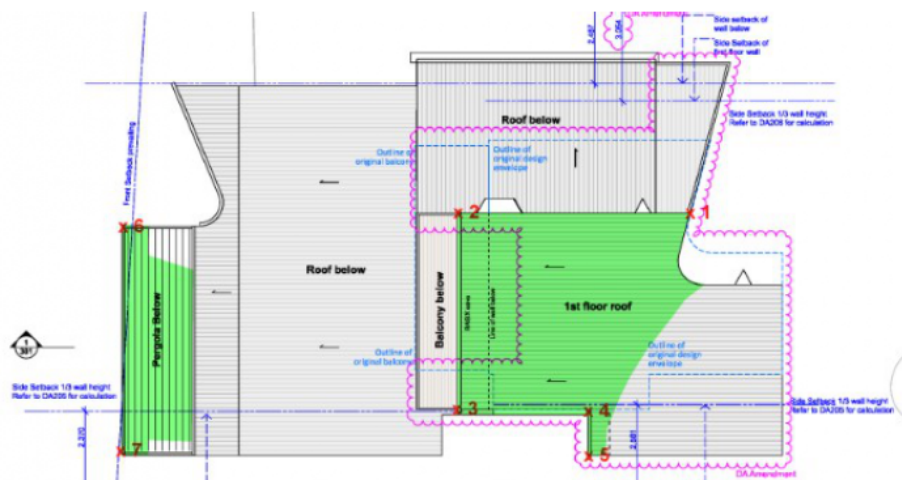


Figure 1 - nomination of points tha

Has the Applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. The application was supported by a detailed submission (attached) addressing the provisions of clauses 4.3 and 4.6 of MLEP 2013. The submission is considered with regard to the criteria of clause 4.6(3) of MLEP 2013, as follows:

- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission relies upon this method.

The applicant's position that the non-compliant elements of the proposed built form are consistent with the objectives of the building height development standard is not supported. In particular, the assessing officer disagrees with the applicant's position in relation to the following objectives:

- (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 applicant relies upon buildings to the west of the site that are a similar height to that currently proposed as being the justification for the proposed height breach. However, the building height of adjoining development is just one element to be considered. The subject site experiences both a fall from south down to towards the north, and a cross fall from west to east. Whilst the proposal may align with the height of those buildings to the west, the design seemingly ignores the topography of the land, which falls away from the level of properties to the west. In consideration of the topography of the area, a dwelling at the subject site should sit lower than the dwellings to the west.

It is also noted that the site benefits from existing excavation under the footprint of the dwelling

to provide subterranean floor space. The resultant development will extend below pre-existing ground levels and above the height plane, resulting in a predominately 3 storey dwelling, with a 4 storey appearance to Bower Street. The resultant development is inconsistent with the 2 storey desired character prescribed by MDCP 2013. Furthermore, whilst in the same alignment as the adjoining dwelling to the west, due to the level of existing excavation and the fall of the land, the proposal will present with one additional level (4 storeys) compared to that of the adjoining development (3 storeys).

(c) to minimise disruption to the following:

- i. views to nearby residential development from public spaces,
- ii. views from nearby residential development to public spaces,
- iii. Views between public spaces.

Comment: As discussed with regard to clause 3.4.3 of MDCP 2013, the non-compliant elements of the proposed development will result in unreasonable impacts upon views currently enjoyed from adjoining properties.

- 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, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act. The environmental planning grounds put forward by the applicant can be summarised as follows:

1. *"The proposal promotes orderly and economic use and development of the land"*, in so far as the proposed development is consistent with that able to be achieved by surrounding development and development generally within the locality.

Comment: Again, the applicant is reliant upon the height of adjoining development to the west, which has different topographic features than the subject site. Furthermore, there is nothing to suggest that the circumstances relating to the development consent issued in relation to the adjoining property are comparable (ie: is the adjoining development compliant with the height plane) to the circumstances of this application.

2. *"The development represents good design and amenity"*, in so far as the proposal is compliant with FSR and as a taller (but compliant) building towards Montpelier would have a greater impact upon views from properties along Montpelier Place.

Comment: The proposal sits at the maximum allowable FSR and provides landscaped area in excess of the minimum landscaped area calculation prescribed. In the circumstance where floor space could be relocated on lower levels of the development, there is no reason as to why a compliant FSR calculation can be said to warrant a breach in the building height development standard. Further, the proposition that a 8.5m high building element could be introduced closer to Montpelier Place that would result in a greater impact upon views is not supported. Firstly, the setback to Montpelier is limited by the prevailing building line (being a secondary street frontage) and secondly, there is no automatic entitlement to build to the maximum building height across the entirety of the site.

3. *"The building as designed facilitate its proper construction and will ensure the protection of the health and safety of its future occupants"*.

Comment: This appears to be a statement of fact, rather than a reason to justify non-compliance with the height plane. It is not clear how this statement can be said to justify the proposed height non-compliance.

The applicant has not presented sufficient environmental planning grounds to justify contravention of the building height development standard.

Therefore, the consent authority cannot be satisfied that the applicant's request has satisfactorily addressed the matters prescribed by clause 4.6(3) of MLEP 2013.

Is the proposal in the public's interest?

Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to a proposal that contravenes a development standard unless the proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

As discussed above, the non-compliant portions of the proposal attribute to inconsistency with a number of objectives of the building height development standard, specifically the following objectives:

- (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,*
- (c) to minimise disruption to the following:*
 - i. views to nearby residential development from public spaces,*
 - ii. views from nearby residential development to public spaces,*
 - iii. Views between public spaces.*

With this in mind, it is also considered that the development as a whole is inconsistent with these objectives.

As discussed with regard to the E3 Environmental Management Zone, the non-compliant proposal also results in inconsistency with the objectives of the E3 zone.

As such, the proposal is not considered to be in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4) of MLEP 2013, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with correspondence from the Deputy Secretary dated 24 May 2019, the Development Determination Panel may assume the Secretary's concurrence in relation to the proposed development.

Conclusion

Overall, the consent authority can not be satisfied of the matters prescribed by clause 4.6 of MLEP 2013, and in light of the building height non-compliance proposed, the proposal should not be supported.

Manly Development Control Plan

Built Form Controls

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Built Form Controls - Site Area: 698.8m²	Requirement	Proposed	Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	-	Yes
	Dwelling Size: 129m ²	311m ²	-	Yes
4.1.2.1 Wall Height	East: 7.3m	7.8m (front balcony) 8.9m (upper floor)	0.5m 1.6m	No No
	West: 7.2m	7m (front balcony) 8.9m (upper floor)	- 1.7m	Yes No
4.1.2.2 Number of Storeys	2	3	1	No
4.1.2.3 Roof Height	Height: 2.5m	0.7m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Bower Street: 6m Montpelier: 16m (prevailing)	9.5m 14.9m	- 1.1m	Yes No
4.1.4.2 Side Setbacks and Secondary Street Frontages	West: 2.3m (front ground floor balcony) 2.4m - 2.95m (upper floor addition)	1m 1m - 2.4m	1.3m 1.95m	No No
	East: 2.7m (front ground floor balcony) 2.1m (rear ground floor extension) 3.2m (upper floor addition)	2.6m 1.5m 6.6m	0.1m 0.6m -	No No Yes
	Windows: 3m	2.2m	0.8m	No
	Secondary street frontage: approximately 17m (prevailing setback)	15m, inconsistent with prevailing setback	2m	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	67%	-	Yes
	Open space above ground <25% of total open space	11%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	47%	-	Yes
	3 native trees	3 trees (conditioned)	-	Yes
4.1.5.3 Private Open Space	18m ²	>18m ²	-	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	5.5m	-	Yes
Schedule 3 Parking and Access	2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	No	No
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 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	No
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	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

A number of properties along Montpelier Place currently enjoy views of the ocean and the coastline in a

north-easterly to north-westerly direction. The views are obtained over the down slope properties along Bower Street, including the roof of the dwelling at the subject site. As the proposal seeks to increase the height of the existing dwelling, to a level approximately equal to the property to the west, it was apparent that the proposal would have impact upon these views currently enjoyed and a number of submissions were received in objection to the development in this regard.

As the impacting element of the proposal was shown to exceed the height limit, the applicant was provided an opportunity to amend the proposal to achieve compliance with the height control. Once amended, height poles were erected on site and certified. The Height Pole Certification is appended to this document, with the respective poles labelled A-D.

The following assessment of the potential impact upon nearby properties has been undertaken with regard to the four-step View Sharing planning principle developed in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

Step One

Occupants of the dwellings at 16-19* Montpelier Place currently enjoy significant views of the northern coastline. Whilst not containing a particular 'icon', the views encompass Manly Beach through to Long Reef (and beyond) and are appropriately described as highly valued and significant.

*Note: The assessment is made in relation to those properties who lodged submissions in objection to the development. It is highly likely that the proposal will also impact upon other dwellings along Montpelier Place.

Step Two

The views are obtained from all areas facing north, including the master bedroom, primary living room and terrace on the upper level, and a second bedroom, living room, entrance lobby and terraces on the lower level. Due to the elevation of the property, the views from the upper level primary living spaces are more wide ranging than those enjoyed on the lower level. The views are obtained over the front boundaries of each respective site and are gained in both the standing and seated position from each respective area.

Step Three

The extent of impact varies between the properties, as follows:

16 Montpelier

Figure 2 demonstrates the impact of the development as seen from the upper level primary living room and terrace. The proposed upper floor will obstruct a portion of the ocean, without impacting upon the coastline views above. As the proposal also proposes to replace the existing pitched roof to the east (right) of the proposed upper floor with a flat roof, the proposal will open up a portion of the ocean view from this angle.

Figure 3 demonstrates the impact of the development as seen from the lower level living room and terrace. The upper floor of the proposal will extend slightly above the existing line of vegetation and will obstruct the land/water interface of Curl Curl Beach currently enjoyed. The occupant of 16 Montpelier advised that the vegetation Figure 3 is located on land owned by St Patrick's Estate (confirmed) and that the vegetation is regularly pruned to maintain this views from the lower level of this dwelling.

Figure 4 demonstrates the impact of the development as seen from the lower level north facing bedroom and terrace. The proposed upper floor will obstruct a portion of the land/water interface

of Curl Curl Beach.

The collective impact upon views obtained throughout 16 Montpelier Place is considered to be minor.

17 Montpelier

Figure 5 demonstrates the impact of the development as seen from the upper level primary living room and terrace. The proposed upper floor will obstruct a portion of the ocean, without impacting upon the coastline views above. As the proposal also proposes to replace the existing pitched roof to the east (right) of the proposed upper floor with a flat roof, the proposal will open up a portion of the ocean view from this angle.

Figure 6 demonstrates the impact of the development as seen from the lower level living room. The proposed upper floor will obstruct Freshwater Headland and all water in the foreground, whilst the more distant view to the east (right) will remain unobstructed.

Figure 7 demonstrates the impact of the development as seen from the lower level front terrace. The proposed upper floor will obstruct Freshwater Headland and all water in the foreground, whilst the more distant view to the east (right) will remain unobstructed.

Figure 8 demonstrates the impact of the development as seen from the lower level bedroom and adjacent terrace. The proposed upper floor will obstruct the entirety of Freshwater Beach and Queenscliff Headland, whilst the more distant view to the east (right) will remain unobstructed.

The collective impact upon views obtained throughout 17 Montpelier Place is considered to be minor/moderate.

18 Montpelier

The proposed development will obstruct a portion of the water view as seen from the upper level primary living room and terrace without impacting upon the coastline view beyond. However, a follow up internal inspection was unable to be undertaken during the re-notification of the subject application. Nonetheless, based on the inspection prior to the erection of height poles and in consideration of the findings of adjoining sites, the level of impact is still able to be qualified.

Figure 9 demonstrates the impact of the development as seen from the lower level bedroom and adjacent terrace. The upper floor of the proposal will obstruct the (currently) filtered views of Freshwater Beach.

The collective impact upon views obtained throughout 18 Montpelier Place is considered to be minor.

19 Montpelier

Figure 10 demonstrates the impact of the development as seen from the upper level primary living room and terrace. The proposed upper floor will obstruct a portion of the ocean, without impacting upon the coastline views above. As the proposal also proposes to replace the existing pitched roof to the east (right) of the proposed upper floor with a flat roof, the proposal will open up a portion of the ocean view from this angle.

The height poles were not visible from the lower level of this dwelling.

The collective impact upon views obtained throughout 19 Montpelier Place is considered to be minor.

Step Four

The proposed upper floor master bedroom suite is solely responsible for each instance of view impact noted in the assessment above. The upper floor protrudes above the 8.5m height plane by 1.3m at Height Pole A, 1.1m at Height Pole B and 0.815m at Height Pole C. The south-western corner of the proposed upper floor (Height Pole D) is maintained below the 8.5m height plane, as this portion of the upper floor is to be sited above an exposed natural rock outcrop, which is elevated above surrounding ground levels.

Whilst the level of impact is categorised as moderate at worst, the impact would be reduced with a compliant or near compliant design. For example, with respect to the impact to the lower level at 17 Montpelier (Figure 8), the loss of the entirety of Freshwater Beach would be avoided if the height was reduced to 8.5m or as close thereto. The portion of the development attributable to the potential impact is also non-compliant with the 2 storey height limit and wall height calculation prescribed by clause 4.1.2 of MDCP 2013, and presents as a fourth storey as seen from Bower Street.

There is also a question as to whether a more skilful design could reduce the level of impact for adjoining properties. In this respect, it is noted that the proposal seeks to increase the internal ceiling height of the ground level to 2.8m, with proposed ceiling levels ranging from 2.5m to 2.9m at the upper floor. Furthermore, the proposal has been designed with the maximum width of each room running across the site, which could be readily reduced/flipped to minimise the width of the resultant impact.

In light of the level of non-compliance with the maximum building height prescribed by MLEP 2013 and the height controls of MDCP 2013, and noting that a more skilful design could lessen the impact, the potential impact upon views currently enjoyed from properties along Montpelier Place is considered unreasonable.

The proposal is also considered to be inconsistent with the requirements of this control, which require views between and over buildings to be maximised, in addition to those objectives that seeks to provide for view sharing between properties and to minimise disruption and loss of views.

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

Wall Height

In consideration of the slope of the site, the proposal is subject to a maximum wall height of 7.3m on the eastern elevation and 7.2m on the western elevation. Portions of both elevations of the proposed development protrude beyond the maximum wall height to varying degrees, as follows:

- With a wall height of 7.9m along the eastern elevation, the new balcony along the frontage of the ground floor extends beyond the maximum wall height by 600mm. The balcony replace an existing balcony in the same location, and the proposed privacy screens will alleviate any direct lines of sight to the adjoining property. No concern is raised with regard to this particular area of non-compliance.
- With a wall height of 8.2m - 9.3m, the entire eastern elevation of the proposed upper floor extends above the 7.3m maximum wall height prescribed. The 0.9m - 2.0m non-compliance directly attributes to impacts upon views currently enjoyed by properties upslope.
- With a wall height reaching of 7.1m to 8.9m, the majority of the western elevation of the proposed upper floor extends above the 7.2m maximum wall height prescribed.

Number of Storeys

The proposed 2 and 3 storey dwelling is inconsistent with the 2 storey height limit prescribed by this control. Due to the slope of the site, the proposal comprises two different three storey elements; with three overlapping floors at the Bower Street frontage and three overlapping floors centrally on the site, where the upper floor master suite overlaps with two existing levels below. The three storey frontage is not inconsistent with the scale of surrounding built form and does not result in any unreasonable impacts upon adjoining or nearby development. However, the central three storey element, which protrudes above the maximum building height and maximum wall height, will be directly responsible for impacts upon views currently enjoyed by properties up slope.

Both the wall height and number of storeys controls refer to the objectives of the maximum building height of clause 4.3 of MLEP 2013. As discussed in detail with regard to that clause, the proposal is not considered to achieve consistency with the objectives of the maximum building height, and as such, variations to these controls are not supportable.

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

Front Setbacks

The subject site presents to both Bower Street to the north and Montpelier Place to the south.

The setbacks of properties to Bower Street vary as a result of the skew in the alignment of the road. However, the setback of the proposal is generally consistent with the prevailing building line.

Whilst detached garages are located with limited setbacks to Montpelier Place, the dwelling houses along this stretch of Bower Street have a generally consistent alignment, with a generous setback of approximately 16m between each dwelling and Montpelier Place. It is acknowledged that the dwelling at 59 Bower Street also features habitable space within the rear setback, however this appears to be the exception, as opposed to the rule.

The proposed upper floor addition is located within the setback area, with a reduced front setback to Montpelier Place of 14.9m. Whilst the reduced setback does not give rise to unreasonable impacts upon the character of the streetscape, the application has not demonstrated whether this portion of the development attributes to the impacts upon views currently enjoyed by residents of Montpelier Place, and as such, consistency with the objectives of the control has not been qualified.

Side Setbacks

The proposed development seeks consent for new and intensified areas of side setback non-compliance, which are considered individually, as follows:

- The eastern side of Bedroom 5 and the associated deck is sited 1.5m from the eastern boundary, inconsistent with the 2.1m minimum setback prescribed. The non-compliance is an extension of the existing building alignment, and does not attribute to any unreasonable impacts upon adjoining properties.
- The western side of the front ground floor balcony is sited 1m from the western boundary, inconsistent with the 2.3m minimum setback prescribed. The proposed balcony has been designed to align with the western facade of the existing dwelling and is an open structure that does not attribute to excessive bulk and scale or unreasonable impacts upon the adjoining property to the west.
- The western elevation of the proposed upper floor, which is sited at 1m - 2.4m from the western side boundary, is inconsistent with the 2.4m - 2.95m side setbacks prescribed. The development was pushed further towards the western boundary in response to the concerns regarding views from properties up slope to the south-east. The non-compliant elements are setback from the Bower Street facade and do not adversely impact upon the scale of the building as seen from down slope. Concern is raised in relation to the spatial separation between the proposal and the

adjoining dwelling to the west, and any existing view corridors currently enjoyed through this space. However, no objection has been raised from the potentially affected property owners at 14 and 15 Montpelier Place.

In the absence of any submission raising concern regarding the reduced spatial separation between properties, the non-compliant side setbacks are not considered to result in any unreasonable impacts upon the streetscape, the amenity of adjoining or nearby properties, or inconsistency with the objectives of the control.

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 \$25,041 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,504,117.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

The proposed upper floor of the dwelling protrudes above the height plane prescribed by MLEP 2013, and is inconsistent with the wall height and number of storeys controls of MDCP 2013. The non-compliant elements of the proposal attribute to impacts upon views currently enjoyed by residents of Montpelier Place, which are considered to be unreasonable in light of the extent of proposed non-compliance and opportunity for more skilful design solutions.

The height non-compliance was supported by a clause 4.6 submission. However, the submission is not considered to demonstrate that compliance with the 8.5m height plane is unreasonable or unnecessary in the circumstances of this application or that there are sufficient environmental planning grounds to justify departure from the development standard.

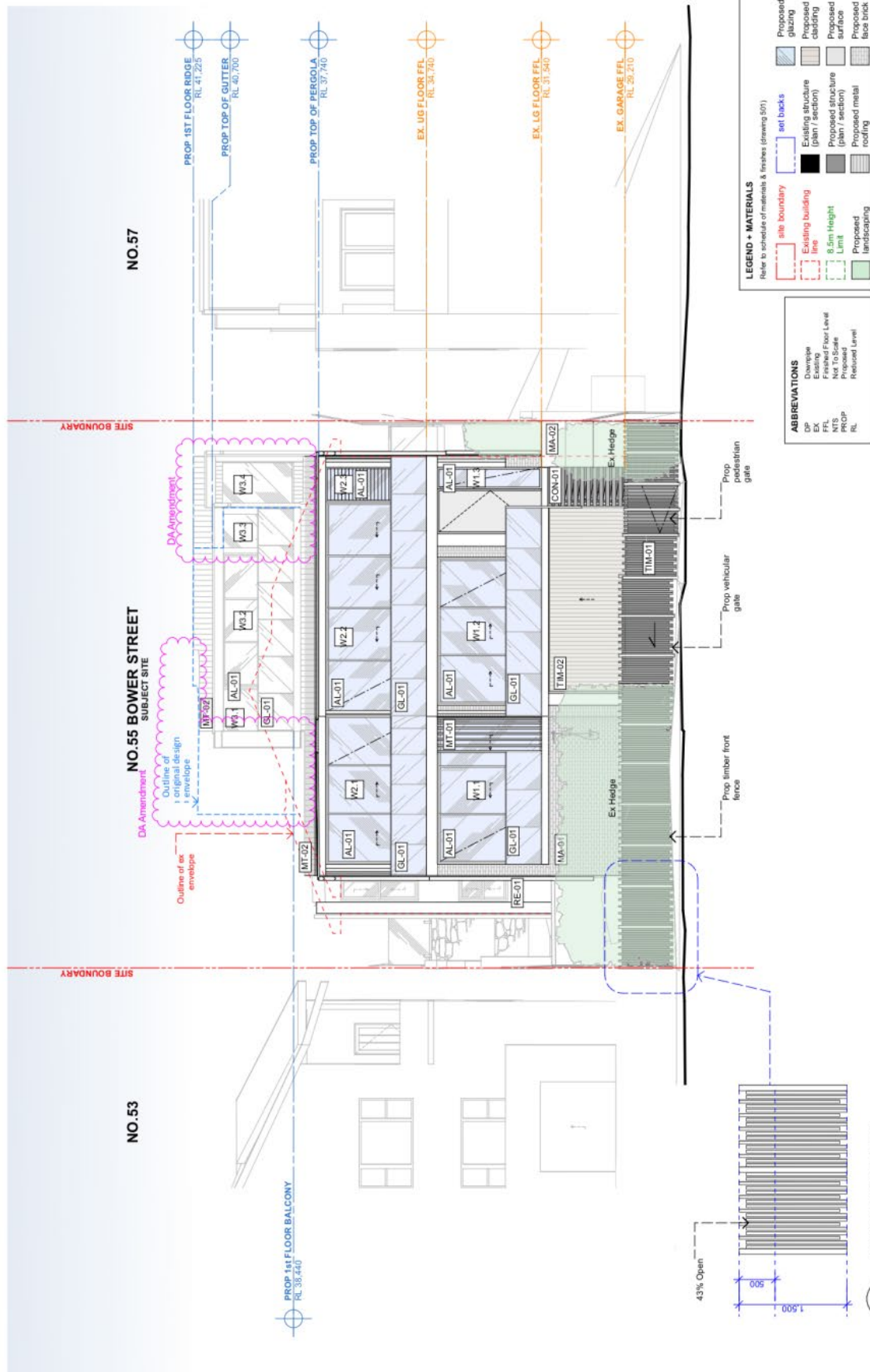
The impacts associated with the non-compliant top floor are considered to warrant the refusal of the subject application.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/1338 for the Alterations and additions to a dwelling house on land at Lot 63 DP 8075,55 Bower Street, MANLY, for the reasons outlined as follows:

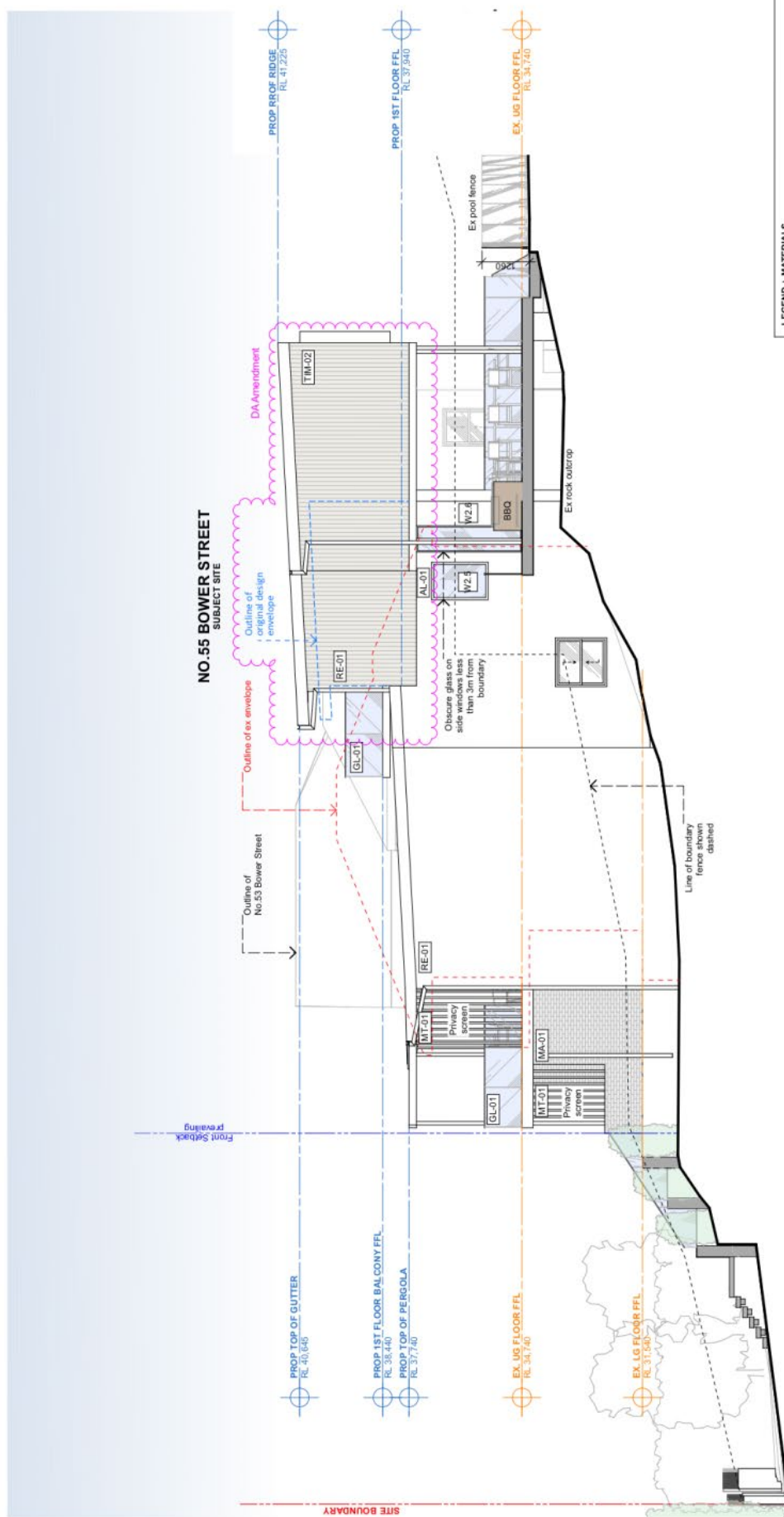
1. The consent authority is not satisfied that:
 1. The applicant's written request under clause 4.6 of Manly Local Environmental Plan 2013 (MLEP 2013) seeking to justify a contravention of clause 4.3 (Height of buildings) development standard has adequately addressed and demonstrated that:
 - a. compliance with the standard is unreasonable or unnecessary in the circumstances of this application; 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 building height development standard and the objectives for development within the E3 Environmental Management zone.
2. The proposed development is inconsistent with the maximum building height prescribed by clause 4.3 (Height of buildings) of MLEP 2013 and the maximum wall height and two storey height limit prescribed by clause 4.1.2 of Manly Development Control Plan (MDCP 2013). The non-compliant portions of the development, specifically those at the upper floor of the proposal, result in unreasonable impacts upon views currently enjoyed by nearby properties, inconsistent with the objectives of these standards/controls and the provisions of clause 3.4.3 (Maintenance of views) of MDCP 2013.

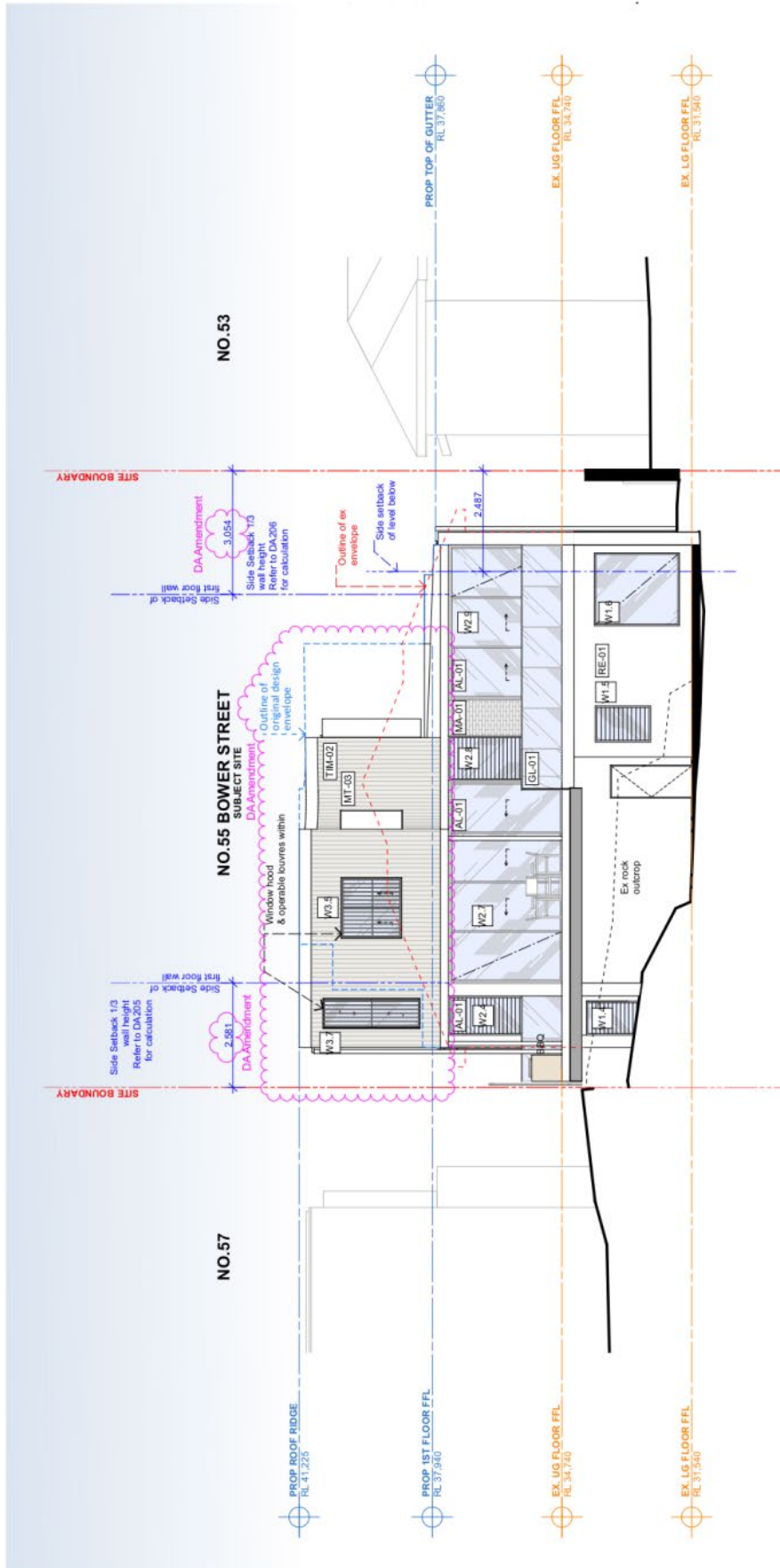


FRONT FENCE DETAIL
1:50

DEVELOPMENT APPLICATION

DESCRIPTION	REV	APPD	DATE	CLIENT	PROJECT NO	STAGE	DRAWING NO	REV
Front Fence for Client Information	P4	SC	24/07/2020	AMANDA & SCOTT LUCKETT	19.06	DA	201	B
For DA Submission	A	SC	18/09/2020					
DA Amendment	B	SC	11/02/2021					
<p>samcrawfordarchitects Level 2, 17 Frederick St, Sydney NSW 2000 TEL: 02 9550 8800 EMAIL: info@samcrawfordarchitects.com.au ACN 118 658 967 Approved Architect Sam Crawford 6888</p>								
<p>LUCKETT RESIDENCE 55 BOWER STREET MANLY NSW 2095</p>								

[illegible]

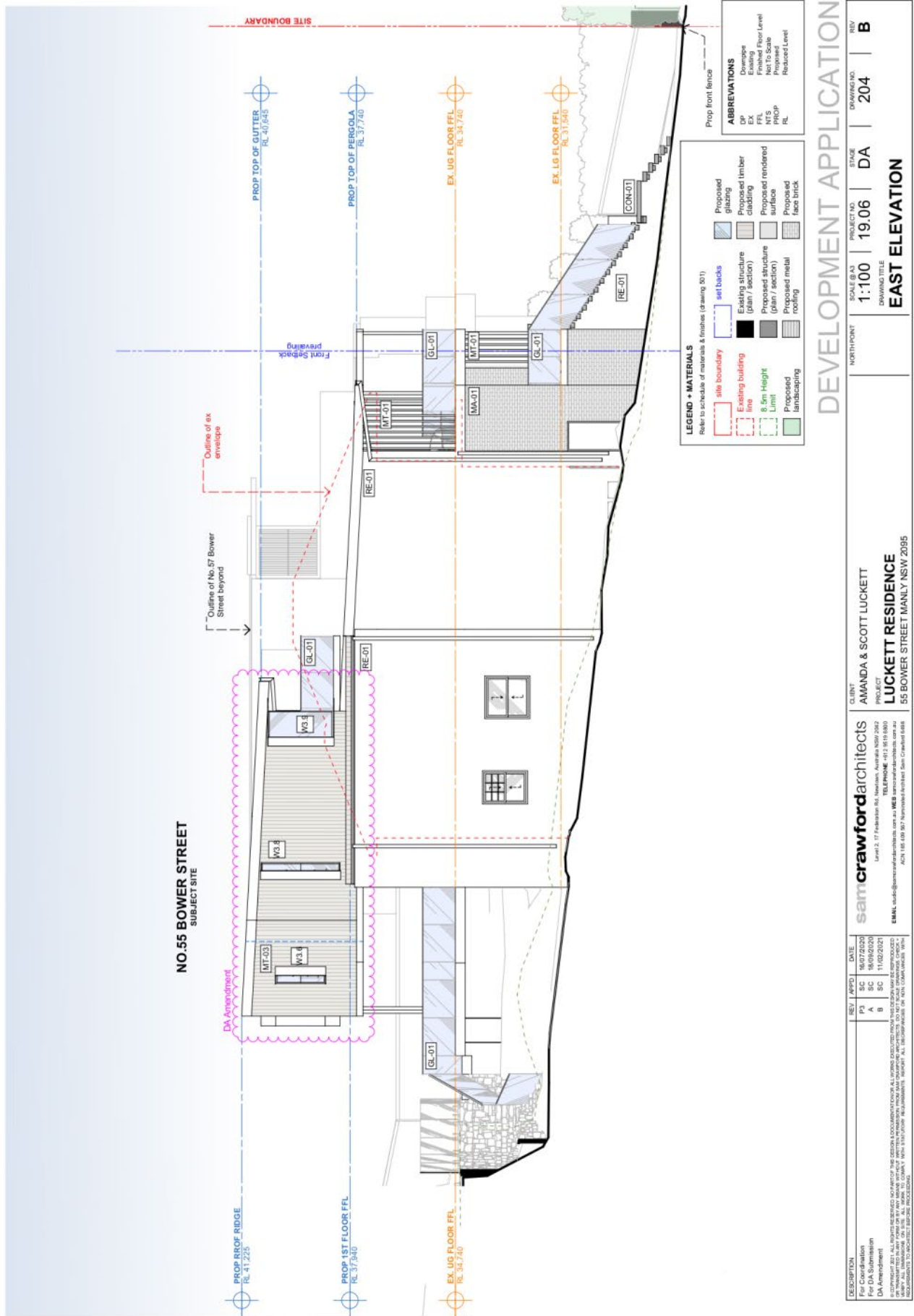


DEVELOPMENT APPLICATION

DESCRIPTION	REV	APPRO	DATE	CLIENT	SCALE	PROJECT NO	STAGE	DRAWING NO	REV
For Coordination	P3	SC	18/07/2020	AMANDA & SCOTT LUCKETT	1:100	19.06	DA	203	B
For DA Submission	A	SC	18/09/2020	LUCKETT RESIDENCE					
DA Amendment	B	SC	11/02/2021	55 BOWER STREET MANLY NSW 2095					

samcrawfordarchitects
 Level 2, 17 Featherston Rd, Manly NSW 1585
 TEL: 02 9369 8800
 EMAIL: info@samcrawfordarchitects.com.au
 A/CN 158 688 967
 Accredited Architect Sam Crawford 6888

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BostonBlythFleming
Town Planners

4th March 2021

The General Manager
Northern Beaches Council
Po Box 82
Manly, NSW, 1655

Attention: Rebecca Englund – Principal Planner

Dear Ms Englund,

Development Application DA2020/1338
Updated clause 4.6 variation request – Height of buildings
Alterations and additions to an existing dwelling
55 Bower Street, Manly

1.0 Introduction

This updated clause 4.6 variation request has been prepared having regard to the amended Architectural plan bundle incorporating plans DA101(A), DA102(B), DA111(A), DA112(A), DA113(B), DA114(B), DA115(B), DA120(B), DA201(B), DA202(B), DA203(B), DA204(B), DA205(B), DA206(C), DA301(A), DA302(B), DA303(B), DA401(B), DA402(B), DA403(B) and DA511(B) prepared by Sam Crawford Architects.

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *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.

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Manly Local Environmental Plan 2013 (MLEP) the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control 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,*

- (b) *to control the bulk and scale of buildings,*
- (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),*
- (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,*
- (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.*

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

The leading case authority which considers the definition of “ground level (existing)” is *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 which was followed in the recent decision of *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

In *Stamford Property Services*, the Court followed the reasoning adopted in *Bettar* and confirmed that “ground level (existing)” must relate to the levels of the site, and not to the artificially modified levels of the site as reflected by the building presently located on the land. In this regard the Court preferred the Council’s method to determining the “ground floor (existing)” from which building height should be measured. Council’s approach required that the proposed height be measured from the natural ground levels of the site where known, such as undisturbed levels at the boundary, and from adjacent undisturbed levels such as the level of the footpath at the front boundary of the site. These levels could then be extrapolated across the site reflecting the pre-development sloping topography of the land, consistent with the approach adopted in *Bettar*.

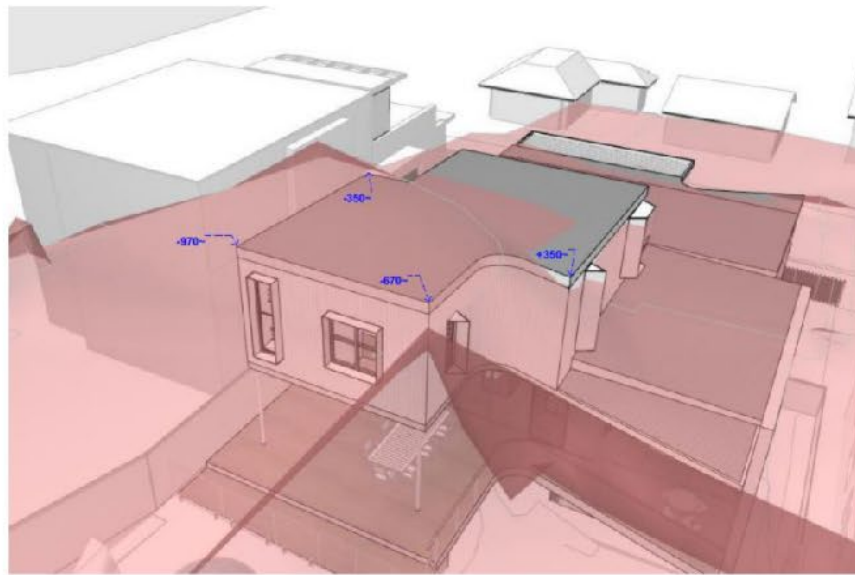
In these proceedings the Court was satisfied that even though there was limited survey information available for the site, there was enough information to determine the “ground level (existing)” for the site based on unmodified surveyed levels in the public domain (footpaths) which could be extrapolated across the site. In summary, the Court has confirmed that the definition of “ground level (existing)” from which building height should be measured:

- is not to be based on the artificially modified levels of the site such as the floor levels of an existing building. This includes the entrance steps of an existing building.
- is not to include the basement floor or the soil beneath the basement following construction of the building.
- is to be based on the existing undisturbed surveyed surface of the ground. For sites where access to the ground surface is restricted by an existing building, natural ground levels should be determined with regard to known boundary levels based on actual and surveyed levels on adjoining properties including within the public domain (footpaths).

The levels of the site have been artificially modified as a result of the construction of the existing dwelling house and associated landscaping which has seen some areas excavated into rock and other excavated areas supported with rough rock and stone retaining walls. This makes an accurate assessment as to the height of the proposed development above unmodified levels across the site challenging. The diagram at Figure 1 shows an 8.5 metre height blanket projected above interpolated unmodified levels. The interpolation of levels is generated by the computer software based on the spot levels contained on the survey with such methodology normally adopted when generating height blanket diagrams.

This diagram shows the northern edge of the street facing upper ground level pergola and northern portion of the first floor addition breaching the 8.5 metre height standard with the breaching elements depicted in grey. This diagram, together with the dimensions contained on the elevation plans, depict a height breach to the street facing upper level pergola of approximately 300mm (3.5%) and a maximum height breach in the north eastern corner of the proposed first floor roof form of 874mm (10.28%).

That said, a more conservative approach sometimes adopted by Council assessment officers in terms of identifying the extent of building height breach is to identify the spot levels located immediately below the proposed roof elements based on available survey information. Whilst I disagree that this is a fair and reasonable assessment approach given that it significantly disadvantages proponents seeking approval for works on sites containing highly modified landforms, with such approach often leading to a disparate height relationship between surrounding development, for abundant caution, I have also undertaken an assessment using this methodology.



DEVELOPMENT APPLICATION									
PROJECT NO.	1001	DATE	10/03/2021	CLIENT	AMANDA & SCOTT LUCKETT	SCALE	1:100	HEIGHT	19.06
PROJECT NAME	LUCKETT RESIDENCE			PROJECT NO.	1001	DATE	10/03/2021	HEIGHT	19.06
PROJECT ADDRESS	88 SUMNER STREET, MARYLENE NSW 2204			PROJECT NO.	1001	DATE	10/03/2021	HEIGHT	19.06
PROJECT DESCRIPTION	Roof Relative to 8.5m Height Plane			PROJECT NO.	1001	DATE	10/03/2021	HEIGHT	19.06

Figure 1 – Plan extract showing height non-compliance based on interpolated ground level (existing)

The following diagrams and table show the proposed building heights having regard to the spot levels contained on the survey plan below the nominated corners of the roof.



Figure 2 – Plan showing roof locations under which survey spot levels were identified and building height breaching roof elements shown shaded green

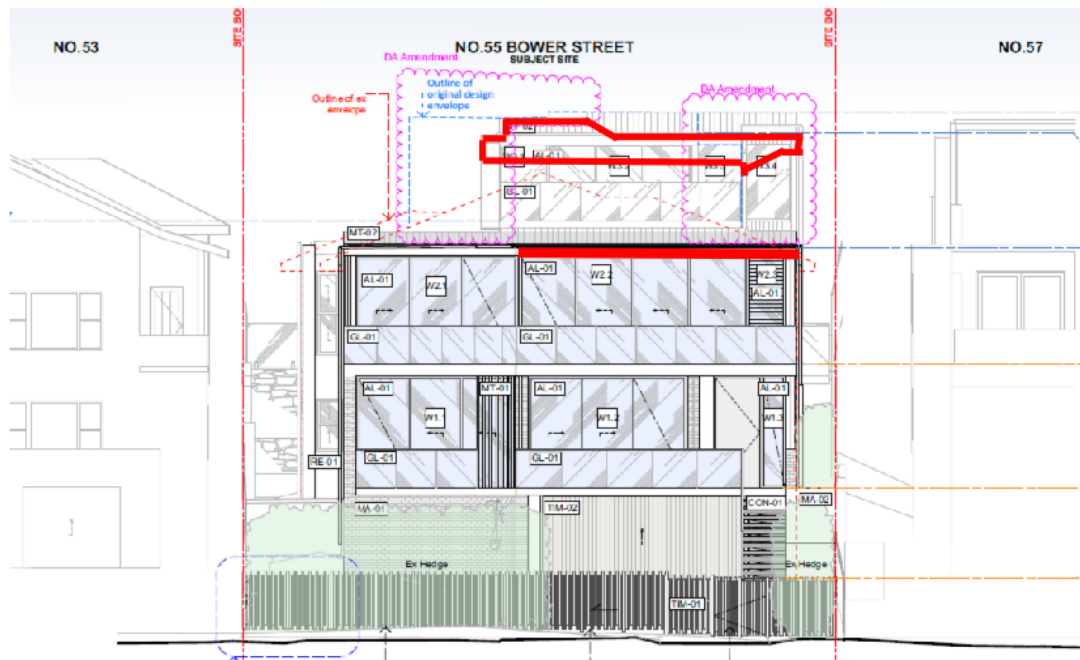


Figure 3 – North elevation with building height breaching elements (as determined from surveyed spot levels) shown in red

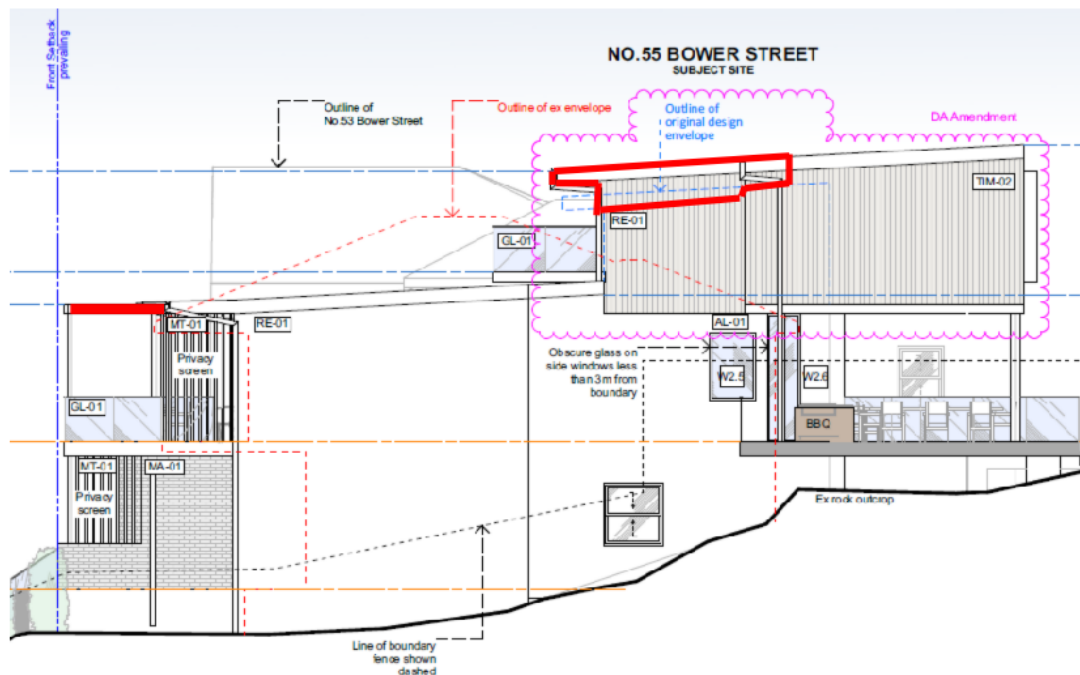
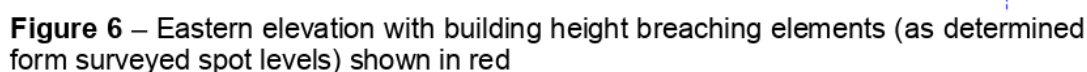
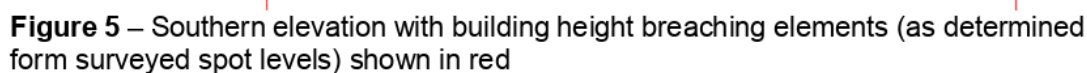


Figure 4 – Western elevation with building height breaching elements (as determined from surveyed spot levels) shown in red



The proposed building heights when measured at roof locations 1 – 10 on Figure 2 are summarised as follows:

Roof location	Proposed roof level (RL)	Spot level below (RL)	Building height (m)	Compliance
1	41.225	34.54	6.685	Yes
2	41.225	34.54	6.685	Yes
3	41.075	31.52	9.555	No 1.055m (12.4%) variation
4	40.645	Not available as within building footprint (interpolated)	9.374	No 874mm (10.2%) variation
5	40.645	31.33	9.315	No 815mm (9.5%) variation
6	40.895	31.48	9.415	No 915mm (10.76%) variation
7	40.895	32.05	8.845	No 345mm (4%) variation
8	37.740	29.60	8.14	Yes
9	37.740	28.87	8.87	No 370mm (4.3%) variation
10	37.740	28.93	8.81	No 310mm (3.6%) variation

Table 1 – Height of proposal above surveyed spot levels at various roof locations

I note that the areas of non-compliance are limited to sections of roof form and areas of building façade of variable dimension with the breaching elements reflecting the disturbed nature of the land and its topography rather than an opportunistic increase in floor space given the developments compliance with the prescribed FSR standard.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) of MLEP provides:

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

The proposed development does not comply with the height of buildings provision at 4.3 of MLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

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

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and

- (b) there are sufficient environmental planning grounds to justify contravening the development standard
- 3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
- 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
- 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP?

4.0 Request for variation

4.1 Is clause 4.3 of MLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 MLEP prescribes a height provision that seeks to control the height of certain development. Accordingly, clause 4.3 MLEP is a development standard.

4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is 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,*

Response: Notwithstanding the building height breaching elements, the height and roof form of the proposed additions result in a building form which is consistent with that established by surrounding dwelling houses and consistent with the prevailing height of residential development generally within the site's visual catchment.

With the exception of the upper ground level pergola, the building presents a compliant building height to Bower Street with the proposed upper level setback over 20 metres from the Bower Street frontage where it will not be readily discernible in a streetscape context. Similarly, the building presents as a compliant 2 storey building element as viewed from Montpelier Place with the non-compliant roof and building elements setback over 15 metres from this frontage. Given the topography of the land a significant number of properties in the locality display a 3 storey stepped building form an example of which is depicted in Figures 7 and 8 below and over page.



Figure 7 – View of subject property (with arches) and the 3 storey development to its west



Figure 8 - View of 3 storey development to the south of the site having frontage and address to Montpellier Place

Having driven around the immediate locality including, but not limited to, the length of Bower Street and Montpellier Place and having viewed the building forms and building heights associated with development within the locality from the streets and from the coastal walkway along Marine Parade, I am satisfied that, notwithstanding the building height breaching elements, the building height and roof form proposed are consistent with the prevailing building heights and roof forms of development within the locality.

Further, as the non-compliant areas of the proposed first floor building elements are setback over 20 metre from the Bower Street property frontage, setback over 15 metres from the Montpellier Place frontage and are screened to a significant extent by the compliant areas of the development located adjacent to both frontages, I am satisfied that the building heights and roof forms proposed are consistent with the desired future streetscape character.

It is clearly evident from an analysis of prevailing building heights that Council has historically applied the building height standard with a degree of flexibility having regard to the topography of the immediate locality. That is, the prevailing and proposed building heights and roof forms are consistent with the topographic landscape.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

The proposal is consistent with this objective.

(b) to control the bulk and scale of buildings,

Response: For the reasons outlined in relation to objective (a) above, I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the compliant floor space (FSR) appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes including a view sharing scenario. In this regard, I note that a substantial view corridor has been maintained down the eastern boundary of the property.

The bulk and scale of the non-compliant building height elements will not be perceived as inappropriate or jarring in the context of the bulk and scale of surrounding buildings with the distribution of the floor space associated with the building height non-compliance ensuring no inappropriate or jarring streetscape or unreasonable view impacts.

The proposal is consistent with this objective.

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

Response: Having viewed the subject site from a number of public spaces including the public walkway along Marine Parade, from Manly Beach and from both Bower Street and Montpelier Place, I am satisfied that the proposed development, notwithstanding the building height breaching elements, will not unreasonably impact any views to nearby residential development from public spaces.

The proposal is consistent with this objective.

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

Response: Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140 as they relate to an assessment of view impacts from No's 16 and 17 Montpelier Place, being the properties identified during Council's assessment of the development application as being affected in relation to views (and which are representative of other potentially affected properties along Montpelier Place), I have formed the following opinion:

First Step - Assessment of views to be affected

An assessment of the view to be affected. The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

No's 16 and 17 Montpellier Place are both 3 storey townhouse style dwellings located on the southern side of Montpellier Place directly to the south of the subject site as depicted in the aerial location photograph at Figure 9 below.



Figure 9 – Aerial photograph showing spatial relationship of No's 16 and 17 Montpellier Place shown collectively with a red star and the subject property shown with a yellow star.

I have been provided with photographs from these properties which depict survey accurate height poles erected on the subject property reflecting certain roof corners/levels. A copy of the height pole certification is at Annexure 1.

Both No's 16 and 17 Montpellier Place have their primary living rooms comprising kitchen, dining and lounge areas and main bedroom at the upper most level with direct access from the living room to a north facing balcony.

The lower level contains the entrance foyer, bedroom and secondary living area with access to a street facing terrace.

Sweeping views are available from the upper level principal living areas and adjacent balconies in a northerly direction over the properties located on the low side of the street, including the subject property, towards freshwater Beach, its northern headland, Curl Curl Beach and its northern head land and a number of beaches and headlands beyond including Long Reef.

Similar views are available from the lower ground floor secondary living and terrace area although these views are interrupted by building forms and landscaping associated with the properties located to the north.



Figure 10 – Photograph from upper level living room balcony of No. 16 Montpellier.



Figure 11 – Photograph from the lower level bedroom terrace of No. 16 Montpellier.



Figure 12 – Zoomed photograph from the lower terrace adjacent to the front entrance door of No. 16 Montpellier



Figure 13 – Photograph from the lower level bedroom terrace of No. 17 Montpellier.



Figure 14 – Photograph from the lower terrace adjacent to the secondary living room/ front entrance door of No. 17 Montpellier

All views are obtained across the front boundary of the subject properties and over and between development located on the low side of the street

Second Step - From what part of the 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: These views are available from the living areas, bedrooms and adjacent balconies/ terraces from both a standing and seated position. The views available over the subject site are obtained across the front and side boundaries of these properties. The seated views from the secondary lower level living, bedroom and terrace areas are highly vulnerable to view impact associated with building height compliant development located on the low side of the street and intervening landscaping.

Third Step – Assessment of extent of the 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: The impacts are described as follows:

16 Montpellier Place



Figure 15 – View loss images from upper level principal living room and adjacent balcony area (left image) and from the lower level bedroom terrace.

These images clearly demonstrated that the view impact associated with the non-compliant building element as viewed from the upper level principal living and adjacent balcony is appropriately described as minor with all critical view elements maintained from both a seated and standing position.

The non-compliant building height breaching elements will result in some view impact from the lower level bedroom terrace however the photograph shows that a generous view corridor is maintained down the eastern boundary of the property to enable the retention of views towards Curl Curl beach and its surf zone and the land water interface of a number of headlands beyond including Long Reef. Given the totality of views retained from this area of the dwelling, and the fact that the views available from the principle living and bedroom areas located at the level above are maintained, I consider the view impact from this lower level bedroom terrace to be appropriately described as moderate.

Whilst I acknowledge that the views currently available from the lower level terrace adjacent to the secondary living room/front entrance door will be obstructed by the proposed development I note that the views further to the east including the Pacific Ocean and Long Reef will be maintained.

Based on an assessment of the totality of the views available from this property, the fact that all critical view elements will be maintained from the upper principal living area and bedroom areas of the dwelling and the vulnerability of views available from the lower levels of the property given their shallow nature, I consider the view impact from the lower level terrace and adjacent secondary living room to be appropriately described as moderate.

In my opinion, the primary focus of the view loss analysis must be in relation to the principle living areas and adjacent balcony located at the upper level of the dwelling. All critical view elements will be maintained from all rooms and balconies located at this upper level with impacts appropriately described as minor. That is, the non-compliant building height elements will have a minor impact on existing views available from the principle living and adjacent open space areas of this particular property.

17 Montpellier Place

Have considered potential view impacts from this property with the benefit of photographs 10, 13 and 14, I have formed the considered opinion that the impact arising from the non-compliant building height elements on views available from the upper level principal living, adjacent balcony and bedroom is appropriately described as minor.

Further, the view impact from the lower level secondary living and terrace area is also appropriately described as minor given that a view corridor down the eastern boundary of the property preserves views towards Curl Curl Beach and the various headlands and beaches beyond.

Finally, whilst I acknowledge that the views currently available from the lower level terrace adjacent to the secondary bedroom area towards Freshwater Beach will be obstructed by the proposed development, I note that the views further to the east including Curl Curl Beach, the Pacific Ocean and Long Reef will be maintained.

Based on an assessment of the totality of the views available from this property, the fact that all critical view elements will be maintained from the upper principal living area and bedroom areas of the dwelling and the vulnerability of views available from the lower levels of the property given their shallow nature, I consider the view impact from the lower level bedroom and terrace to be appropriately described as moderate.

Fourth Step – Reasonableness of the proposal

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.

The proposed development is fully compliant with the applicable FSR standard with the building height breach directly attributable to the topography of the land and the appropriate distribution of floor space on this particular site. In this regard, I note that a fully compliant 8.5 metre building envelope setback 8 metres from the Montpelier Place frontage would have significantly greater impact on views than the scheme currently proposed. That is, a compliant 8.5 metre high building form located at the rear of the site above RL 34.54 (the level of the deck, pool and grassed area) would have a height of RL 43.04 being some 1.815 metres above the maximum roof RL of 41.225 currently proposed. This compliant height building form would have a significantly greater impact on views from both levels of the Montpelier Place properties than the development currently proposed.

The proposal represents a skilful design whereby a compliant quantum of floor space has been appropriately distributed on the site in a contextually appropriate manner with a view corridor maintained down the eastern boundary of the subject property. The proposed building height is entirely consistent with that established by the adjoining properties and to that extent we consider the proposal to be contextually appropriate and reasonable under the circumstances.

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: N/A

Having reviewed the detail of the application we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140 and *Davies v Penrith City Council* [2013] NSWLEC 1141.

The proposal is consistent with this objective.

- (iii) *views between public spaces (including the harbour and foreshores),*

Response: The building form and height has been appropriately distributed across the site such that the elements breaching the building height element will have no impact on views between public spaces.

The proposal is consistent with this objective.

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

Response: The application is accompanied by shadow diagrams DA401 to DA403 which depict the impact of shadowing on the neighbouring properties. I note that these adjoining dwellings are predominately north facing to capture the view aspect. The proposal results in some minor additional overshadowing however the non-compliant building elements will not result in any non-compliant shadowing impacts have regard to the MDCP solar access control.

The proposal is consistent with this objective.

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

Response: This objective is not applicable.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is zoned E3 Environmental Management pursuant to MLEP 2013 with dwelling houses permissible in the zone with consent. The stated objectives of the zone are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Response: The proposal results in a dwelling that will result in little impact to the ecological and aesthetic values of the area. A biodiversity report was undertaken and concluded that the development is unlikely to have a significant impact on the conservation of any endangered population.

The development will not adversely impact on the scenic qualities of the area with the design, bulk and scale of the proposal being consistent with existing development within the sites visual catchment.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Response: The proposal maintains the established single dwelling residential use on the site consistent with this objective.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Response: 2 trees are proposed to be removed at the front of the site and not considered to be of significant value. A detailed landscape plan has been provided which represents an enhancement of the site which utilises native species with new tree plantings proposed.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Response: The development will have no impact on the foreshore area, geological features or existing natural vegetation. The landscape plan will include native species which seeks to improved the amount of native vegetation in the local area.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Response: The locational context of the site is not in close proximity to the foreshore area.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Response: The resultant height and bulk of the dwelling is consistent with that of adjoining development along Bower Street. The proposal responds the natural topography of the site and does not impact on any existing vegetation in the area.

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the E3 Environmental Management zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.2a Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land which limits the ability to distribute a compliant quantum of floor space across the site in a contextually appropriate manner whilst complying with the height of buildings standard.

In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraint by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes including a view sharing scenario.

The proposed development is fully compliant with the applicable FSR standard with the building height breach directly attributable to the topography of the land and the appropriate distribution of floor space on this particular site. In this regard, I note that a fully compliant 8.5 metre building envelope setback 8 metres from the Montpelier Place frontage would have significantly greater impact on views than the scheme currently proposed. That is, a compliant 8.5 metre high building form located at the rear of the site above RL 34.54 (the level of the deck, pool and grassed area) would have a height of RL 43.04 being some 1.815 metres above the maximum roof RL of 41.225 currently proposed. This compliant height building form would have a significantly greater impact on views from both levels of the Montpelier Place properties than the development currently proposed.

I note that the areas of non-compliance are limited to sections of roof form and areas of building façade of variable dimension with the breaching elements reflecting the disturbed nature of the land and its topography rather than an opportunistic increase in floor space given the developments compliance with the prescribed FSR standard.

The proposal is of good design which facilitates the orderly and economic use and development of the land consistent with that that able to be achieved by surrounding development and development generally within the locality.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design and amenity (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3A and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary’s concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- (g) Concurrence of the Secretary can be assumed in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

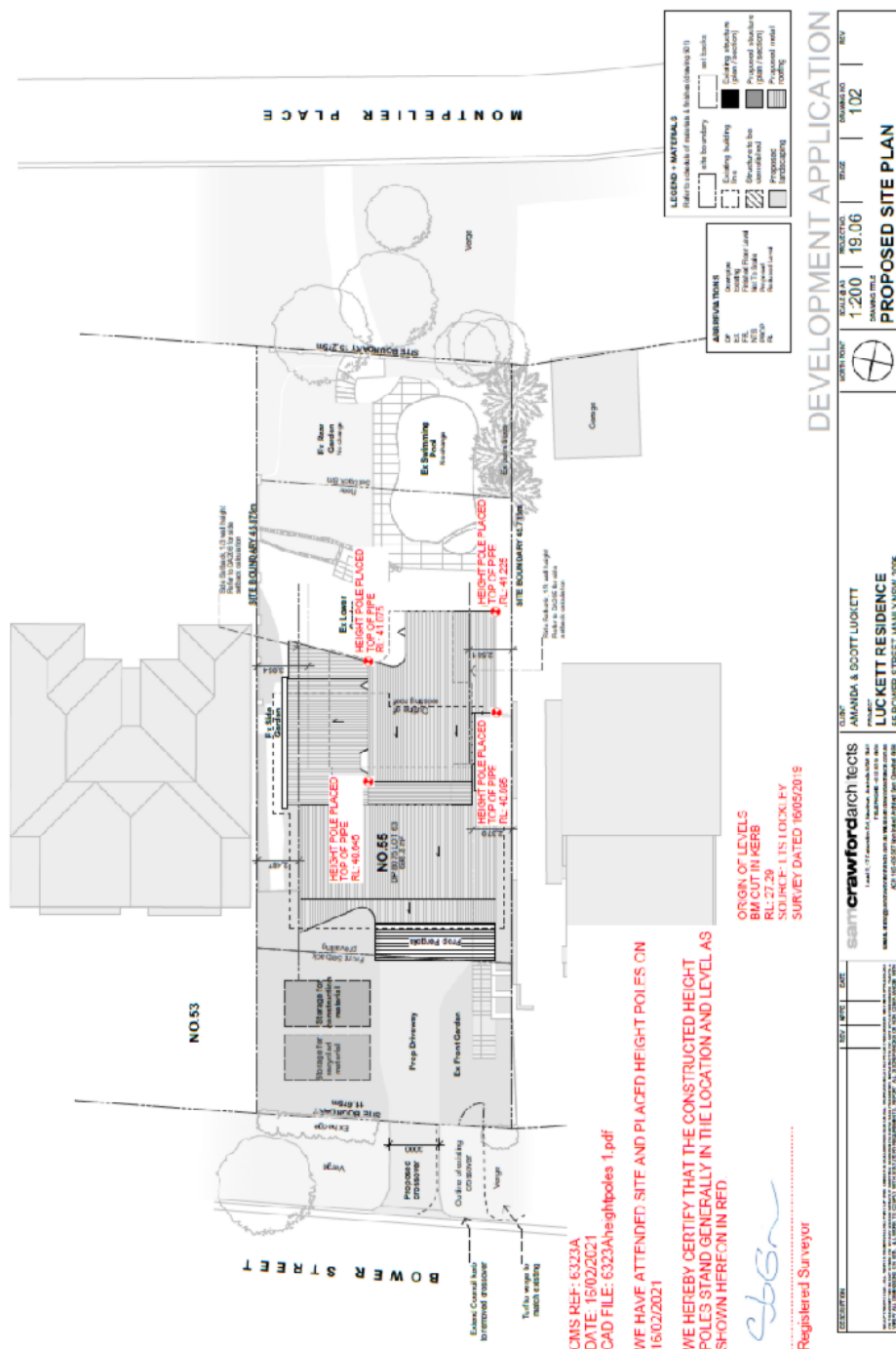
Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Annexure 1 Height pole certification

Annexure 1: Height pole certification



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Figure 2 - 16 Montpelier – Upstairs Living Room - Standing



Figure 3 - 16 Montpelier – Downstairs Living Area - Standing



Figure 4 - 16 Montpelier – Downstairs Bedroom and Terrace – Sitting



Figure 5 - 17 Montpelier – Upstairs Living Room -Standing



Figure 6 - 17 Montpelier – Downstairs Living Room - Standing



Figure 7 - 17 Montpelier – Downstairs Front Terrace – Standing



Figure 8 - 17 Montpelier – Downstairs Bedroom & Terrace – Standing



Figure 9 - 18 Montpelier – Downstairs Bedroom & Terrace – Standing



Figure 10 - 19 Montpelier – Upstairs Living Room – Standing



ITEM 3.5	DA2020/1419 - 23 CRESCENT STREET, FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2021/199519
ATTACHMENTS	1 Assessment Report 2 Site Plans & Elevations 3 Report - Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2020/1419 for Alterations and additions to a dwelling house on land at Lot B DP 33413, 23 Crescent Street, Fairlight, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1419
Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot B DP 33413, 23 Crescent Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a dwelling house
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:	Thomas Gregory Lamond Tara Anne Lamond
Applicant:	Thomas Gregory Lamond
Application Lodged:	12/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/11/2020 to 04/12/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 21%
Recommendation:	Approval
Estimated Cost of Works:	\$ 464,000.00

EXECUTIVE SUMMARY

The application is for the proposed alterations and additions to an existing dwelling at 23 Crescent Street Fairlight (DA2020/1419). The proposed works comprise of a rear extension and a first floor addition which are permissible with consent under MLEP 2013 within the R1 General Residential zone. The application presents a 21% variation to clause 4.4 floor space ratio control of the MLEP 2013 and has been justified by the Applicants clause 4.6 written request to vary a development standard. As such, the application is referred to the DDP with a recommendation for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of the following works:

- rear extension to existing dwelling
- extension of rear deck attached to existing dwelling
- first floor addition
- new western boundary fencing
- associated retaining walls and landscaping

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

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

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot B DP 33413 , 23 Crescent Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Crescent Street, Fairlight.</p> <p>The site is regular in shape with a frontage of 7.225m along Crescent Street, northern side boundary measuring 2.95m, 22.53m and 1.34m, southern side boundary measuring 30.36m and a rear measuring 6.835m. The site has a surveyed area of 215.9m².</p> <p>The site is located within the R1 General Residential zone</p>

and accommodates a single storey semi-detached house with a metal roof. There is no vehicular access to the site. Pedestrian access is available from Crescent Street via a concrete footpath.

The site has a gentle slope to the west of approximately 2m from the eastern frontage to the western rear.

The site has limited vegetation and large paved areas. There are some small shrubs along the eastern boundary of the site and small trees and vegetation along the southern side boundary and western rear.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential dwellings including semi-detached dwellings, dwelling houses and residential flat buildings.

Map:



SITE HISTORY

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

Application History

The proposal was reviewed by Council's Heritage Officer who requested amendments to the proposal to maintain the original main roof form when it is viewed from the street and to maintain the existing streetscape presentation.

The Applicant provided amended plans which were reviewed by Council's Heritage Officer. One of the issues raised by heritage was resolved, however the first floor roof form has not been amended to be

symmetrical to the attached semi at No. 25 Crescent Street. Therefore Heritage required required further amendments to the roof form.

Additional amended plans were provided to Council that resolved the remaining concerns.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/11/2020 to 04/12/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>General Comments</p> <p>Environmental Health have been requested to review the proposed solid fuel heater installation as part of the development.</p> <p>Insufficient details has been submitted for the solid fuel heater to be installed, and the distances of the flue to the adjacent residence.</p> <p>Environmental health are recommending refusal based insufficient information as a determination cannot be made currently.</p> <p>For an assessment to be undertaken the applicant must provide the specifications for the solid fuel heater to be installed, and distance to the adjacent residence roof penetration as per as2918:2018.</p> <p>Otherwise the installation of a solid fuel heater can be determined separately to the development application as part of a section 68 application which can be conditioned.</p> <p>Amended comments 2 February 2021 - Additional information provided.</p> <p>The applicant has provided additional information which shows that a gas heater is to be installed rather than a solid fuel heater.</p> <p>Based on the provided information Environmental Health are recommending approval with no proposed conditions.</p> <p>Recommendation</p> <p>Approval - No Conditions</p>
Landscape Officer	<p>This application is for the extension of the existing deck at the rear of the property, and the addition of another level to accommodate additional bedrooms with en-suites, an office as well as additional storage.</p> <p>Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping <p>The Statement of Environmental Effects provided with the application indicates that no existing vegetation shall be removed as a result of</p>

Internal Referral Body	Comments
	<p>the proposed works. As indicated on both the Site Survey and Architectural Plans, there are currently no existing trees within the site boundaries. Upon further review, there is an existing street tree located at the front of the property, which shall be retained. The retention of this tree, as well as other existing street trees in close proximity, is vital to satisfy controls 3.3.1, 3.3.2 and 4.1.5. These street trees successfully soften the built form, whilst preserving the scenic value and existing character of the area.</p> <p>The landscape component of the proposal is therefore accepted subject to the protection of existing trees.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>This application has been referred to Heritage, as it adjoins a listed heritage item, being Item 12 - All stone kerbs - Manly municipal area and within the vicinity of a heritage item, being Item 147 - Semi-detached houses - 16 and 18 Crescent Street, listed in Schedule 5 of Manly Local Environmental Plan 2013.</p>
	Details of heritage items affected
	<p>Details of the items as contained within the Manly heritage inventory are as follows:</p> <p>Item 12 - All stone kerbs <u>Statement of significance:</u> Stone kerbs are heritage listed. <u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p> <p>Item 147 - Semi-detached houses <u>Statement of significance:</u> A good example of semi-detached housing c.1900 in local area. <u>Physical description:</u> Stuccoed brick semi-detached cottages with iron roof. Original diamond pattern slate roof now extant only on front portico. Significant elements include: portico; patterned glazing bars; false dormers with render decoration and turned verandah posts.</p>
	Other relevant heritage listings
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
	No

Internal Referral Body	Comments		
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks approval for alterations and additions to the existing semi detached dwelling, which is not a heritage listed item, however, it is part of a group of identical Federation style houses built in the early 1900s. It is appreciated that the proposal retains most of the original dwelling including the original fabric both internal and external, however the original roof form is proposed to be changed from hipped to gabled roof form.</p> <p>Regardless of whether a building is heritage listed or not impact of a first floor addition on the streetscape must be considered. The existing dwelling makes a positive contribution to the streetscape and it should be conserved in a sympathetic way to enhance this contribution. From a heritage point of view there are no objections to the proposal apart from the proposed roof form facing Crescent Street.</p> <p>Heritage recommends the following amendments to the proposal to maintain the original main roof form when it is viewed from the street and to maintain the existing streetscape presentation :</p> <ul style="list-style-type: none"> Existing roof form (hipped roof form) to the street frontage at the ground floor level should be maintained, including the front verandah and the original fabric - timber details. Proposed roof form for the first floor addition should be symmetrical to the attached semi (25 Crescent Street, Fairlight). <p>Therefore, Heritage requires amendments to the proposal.</p> <p>Amended Plans - 02 February 2021</p> <p>Amended plans, submitted in February 2021, have resolved one of the concerns Heritage had with the proposal, but the first floor roof form has not been amended to be symmetrical to the attached semi. The submitted drawings - both plans and elevations - do not reflect the survey plan or the existing roof form of 25 Fairlight Street.</p>		

Internal Referral Body	Comments
	<p>Therefore, Heritage requires further amendments to the proposal to change the first floor roof form and be symmetrical to the attached semi.</p> <p>Amended Plans - 07 March 2021</p> <p>Amended plans, submitted in March 2021, has resolved the remaining concern that Heritage had with the proposal. It is noted that the heritage listed stone kerbs are located outside the property, however no works are proposed to this section of the site and the stone kerbs are not impacted by the works. It is considered that the proposal will not impact the significance of the heritage item within the vicinity or the significance of the streetscape.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 26 November 2020, Amended 10 March 2021</p>

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. A391102_03 dated 22 October 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	7.9m	-	Yes
Floor Space Ratio	FSR: 0.6:1	FSR: 0.75:1	21%	No

Compliance Assessment

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

Detailed Assessment

4.4 Floor space ratio

Description of non-compliance:

The proposal presents a variation to the floor space ratio control by 21%. As such a clause 4.6 written request to vary a development standard is required to accompany the application.

An assessment of the applicants clause 4.6 request is provided below.

Clause 4.6 Exception to Development Standards

Development standard: Floor space ratio

Requirement: 129.5m² or 0.6:1

Proposed: 162.3m² or 0.75:1

Percentage variation to requirement: 21%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The proposal produces an appropriate environmental planning outcome which is equal to a compliant proposal in terms of local character and compatibility. The proposed dwelling will sit within a local environment dominated by low density housing in the form of detached and semi-detached dwelling. This character will be retained as a result of the proposed development.

Furthermore, the floor space variation of 6.6m² (4%) is relatively minor in the context and would be undiscernible to the casual observer. The overall development is design of good architectural quality and excessive bulk and scale is not apparent.

As there is no material adverse impact on adjoining properties or the public domain arising from the variation to the floor space ratio development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstance of the case. Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard.

The Applicant refers to the Manly DCP control 4.1.3.1 Exceptions to FSR for Undersized Lots to justify

the non-compliance with the floor space ratio to reach a 4% variation to the Council. However the floor space ratio for the site is mandated under the Manly Local Environment Plan 2013 and therefore presents a much higher variation than that stated by Applicant. Council will take this into consideration as part of the written request to vary a development standard however the DCP control it is not a development standard and therefore the development presents a further non-compliance than that being justified by the Applicant.

Notwithstanding the above, 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.

The proposed first floor addition presents an articulated front façade and that will match adjoining first floor addition at No. 25 Crescent Street. The first floor addition is sympathetic to the streetscape and nearby heritage items to present a good design outcome to provide increased residential amenity. Given the site constraints, including narrow width and existing development a variation to the floor space ratio control is justified in this particular circumstance.

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

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

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

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

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

Comment:

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

Objectives of development standard

FSR objectives

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

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

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

Comment:

The development comprises of a first floor addition and rear extension that has been designed to be

complementary to the adjoining semi-detached dwelling. The adjoining property was approved under DA2018/1861 on the 5 June 2020 for a similar development and variation to the floor space ratio development standard. The proposed first floor addition is compliant with the clause 4.3 height of buildings development standard. The height of buildings development standard is designed to control building height ensuring the scale of the development is consistent with that of the surrounding area. The proposals compliance with this development standard demonstrates that the overall height of the development is consistent with the desired streetscape character of the surrounding locality. The first floor incorporates an additional setback to minimise the bulk as viewed from the streetscape. Additionally the first floor roof form has been designed to complement the neighbouring dwelling and present an addition sloped setback. The proposed development is suitably designed to ensure the bulk and scale does not result in any unreasonable impact on the existing and desired character of the locality.

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

Comment:

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

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

Comment:

The first floor addition is located behind the existing ridge to minimise the bulk and scale of the addition when viewed from the streetscape. The proposed addition will be sited above the existing ground floor level and will not obscure or impact upon any landscape features. The proposal will maintain an appropriate relationship with new and existing character of the locality and the landscape character of the area.

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

Comment:

The proposal is not expected to have any unreasonable impacts on the amenity of the locality or the use or enjoyment of adjoining land and the public domain.

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

Comment:

The development is not expected to impact the viability of any nearby business zone or local centre.

Zone Objectives

The underlying objectives of the R1 General Residential zone are:

*to provide for the housing needs of the community
to provide for a variety of housing types and densities
to enable other land uses that provide facilities or services to meet the day to day needs of the residents*

Comment:

The proposal will maintain the existing housing type on site. The proposed alterations and additions to provide for a rear extension and first floor addition will provide for increased residential amenity for the residents to meet the day to day needs of the residents without any unreasonable visual and acoustic privacy, solar access and view impacts on adjoining properties.

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

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

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

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

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 215.9m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	maximum 6.9m (based on gradient 1:15)	max 7.5m	8.6%	No
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.7m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (2.7m)	2.4m to existing ground floor 5.1m to first floor addition	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	ground floor: 0.96m-1.4m (based on wall height) first floor: 1.86m-2.25m (based on wall height)	ground floor: 1.1m (max) first floor: 2.4m (max)	- 6%	No
	Windows: 3m	ground floor: 1.8m first floor: 2.4m	40% 20%	No
4.1.4.4 Rear Setbacks	8m	ground floor: 1m first floor: 8m	87.5% -	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	101.8m ² or 47%	15%	No
	Open space above ground 25% of total open space	22.2 or 21%	-	Yes

4.1.5.2 Landscaped Area	Landscaped area 35% of open space	18%	49%	No
	1 native trees	Nil	N/A	No
4.1.5.3 Private Open Space	18sqm / 12sqm per dwelling	34sqm	-	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ 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
3.3.2 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
3.5 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
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1.1 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)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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

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

Description of non-compliance

The Manly DCP 2013 permits a maximum 6.9m wall height on a site with this gradient. The proposal comprises of a maximum wall height of 7.5m, presenting a 8.6% variation to the control.

Merit consideration

The Manly DCP 2013 does not include objectives relevant to this control, however refers to the objectives of clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. The proposal is assessed with regard to the relevant objectives 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 building height is below the maximum permitted building height for the locality. Additionally the low pitched roof and additional setback of the first floor addition will minimise the bulk of the development and maintain a development that is consistent with the desired future character of the locality.

(b) to control the bulk and scale of buildings

Comment:

The proposed first floor addition has been further setback from the streetscape to provide articulation and minimise the bulk and scale when viewed from adjoining sites and the streetscape.

(c) to minimise disruption of 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 harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

It is not expected the proposal will result in any unreasonable loss of views within the locality.

(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:

Shadow diagrams submitted with the development application demonstrate that the proposed development will not result in unreasonable impacts on solar access to public and private open spaces and habitable rooms of adjoining dwellings.

(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 site is not located within an environmental protection zone.

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

4.1.3 Floor Space Ratio (FSR)

See section 4.4 floor space ratio for further discussion.

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

Description of non-compliance

The existing ground floor presents a minor variation to the setback control. Given this is an existing non-compliance it will not form part of this assessment.

the proposed first floor addition presents a maximum variation to the side setback control of 6% and the ground floor addition presents a variation to the control by 87.5%.

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 first floor addition is mostly compliant with the setback control, with a non-compliance resulting from the sloping topography of the site. The first floor addition is further setback from the front boundary and the roof form has been designed to complement the character of the street. Additionally existing landscaping within the front setback of the site will be retained.

The rear extension comprising of a deck will not be visible from Crescent Street and will be screened by vegetation, therefore it will not detract from the character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal is considered to ensure and enhance local amenity as a result of:

- the first floor addition complies with the front and rear setback control. However the rear extension on the ground level presents a variation to this control. it is not expected the new deck area will have an adverse impacts on local amenity given its modest height above ground, small size and suitable setback to limit overlooking. Existing fencing and the incorporation of landscaping within the rear setback area will provide for screening to the property to the rear.
- the shadow diagrams provided as part of the development application demonstrate that the proposed development will maintain reasonable solar access within the locality.
- the proposal will not result in any unreasonable disruption of views.
- the proposal will follow the existing pattern of separation between buildings.
- the proposal will not impact on traffic conditions within the locality

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

Comment:

The potential for development on the site is limited given its shape and size. Flexibility is appropriate in this circumstance.

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:

There are no proposed changes to the existing landscape conditions on site.

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

Comment:

The site is not noted as being within bushfire prone land. Nonetheless, the proposed building separation is considered acceptable in these circumstances.

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 / is not supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The Manly DCP 2013 requires 55% of the site area to be provided as total open space and 35% of the open space to be landscaped area. The proposal comprises of a total of 101.8m² or 47% of open space area and of this space 18% is landscaped area. There are no proposed changes to the existing open space and landscaped area.

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 proposal does not seek to remove any landscape features or 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:

There are no changes to the existing open space and 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 proposal has been designed to maintain existing landscaping and open space to ensure a reasonable level of amenity is enjoyed by adjoining residents and the streetscape.

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

Comment:

There are no proposed changes to the landscaped area and paved surfaces on site. The proposal will enhance water infiltration on site. New roofing will be connected to existing storm water drainage.

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

Comment:

Existing landscaping will minimise the spread of weeds within the locality.

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

Comment:

The proposal will enhance the wildlife habitat on 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.

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 \$4,640 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$464,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

- Variation to the floor space ratio control
- Height of buildings (incorporating wall height, number of storeys and roof height)
- Setbacks (front, side and rear) and Building Separation
- Open space and landscaping

The assessment has found the proposal to be consistent with the objectives of the Manly LEP 2013 and Manly DCP and therefore the application is recommended for approval.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2020/1419 for Alterations and additions to a dwelling house on land at Lot B DP 33413, 23 Crescent 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
00 Cover RevC	08/03/2021	Designer Buildings

01 Site Analysis Plan RevC	07/03/2021	Designer Buildings
03 Site and Roof Plan RevC	07/03/2021	Designer Buildings
02 Ground Floor Plan RevC	07/03/2021	Designer Buildings
04 First Floor Plan RevC	07/03/2021	Designer Buildings
12 South Elevation RevC	07/03/2021	Designer Buildings
16 East Elevation RevC	07/03/2021	Designer Buildings
11 West Elevation RevC	07/03/2021	Designer Buildings
17 Section RevC	07/03/2021	Designer Buildings
19 Specifications RevC	12/08/2020	Designer Buildings
31 Shadow Diagrams March & September RevC	23/09/2020	Designer Buildings
32 Shadow Diagrams June RevC	23/09/2020	Designer Buildings
33 Shadow Diagrams December RevC	23/09/2020	Designer Buildings
22 External finishes and BASIX RevC	22/10/2020	Designer Buildings
20 Sediment & erosion plan, waste management plan RevC	07/03/2021	Designer Buildings
21 Notification Plan RevC	07/03/2021	Designer Buildings

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A391102_03	22/10/2020	Anna Gaszewski

- 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	08/03/2021	Designer Buildings

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

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

2. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- A sign must be erected in a prominent position on any site on which building work,

subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

- 4. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$4,640.00 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 \$464,000.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT POLICY FOR DEVELOPMENT.

Details demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

7. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. **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.

9. **Protection of existing street trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing 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.

As a minimum the tree protection fencing for the street tree fronting the development site shall consist of standard 2.4m panel length to four sides, located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: tree protection.

10. **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 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.

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****11. Condition of retained vegetation**

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

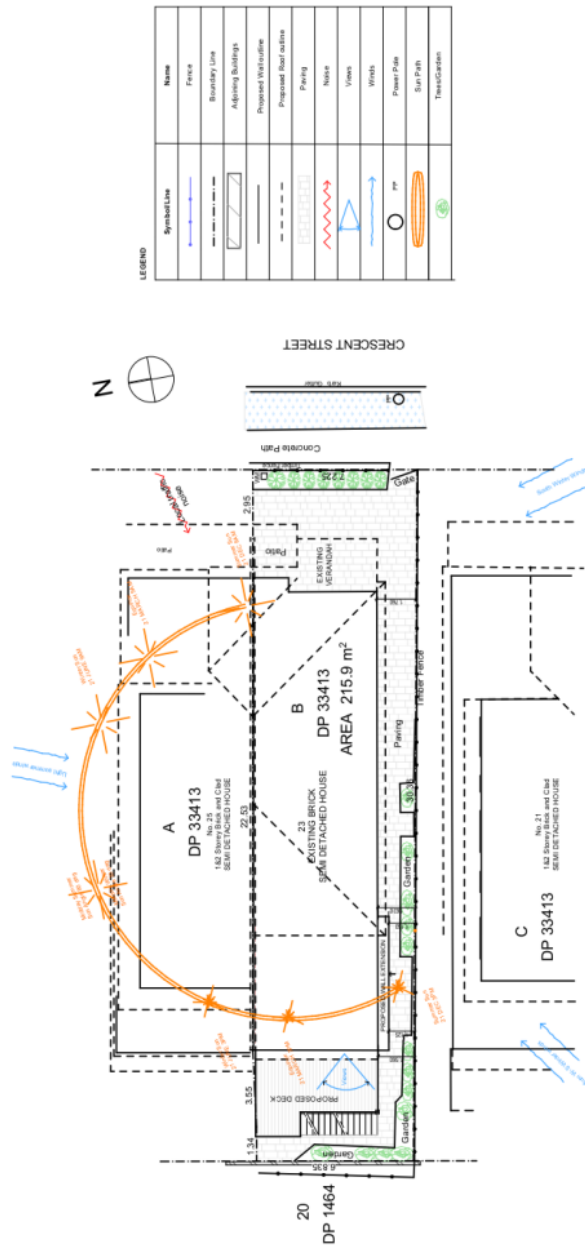
- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: tree protection.

12. 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.

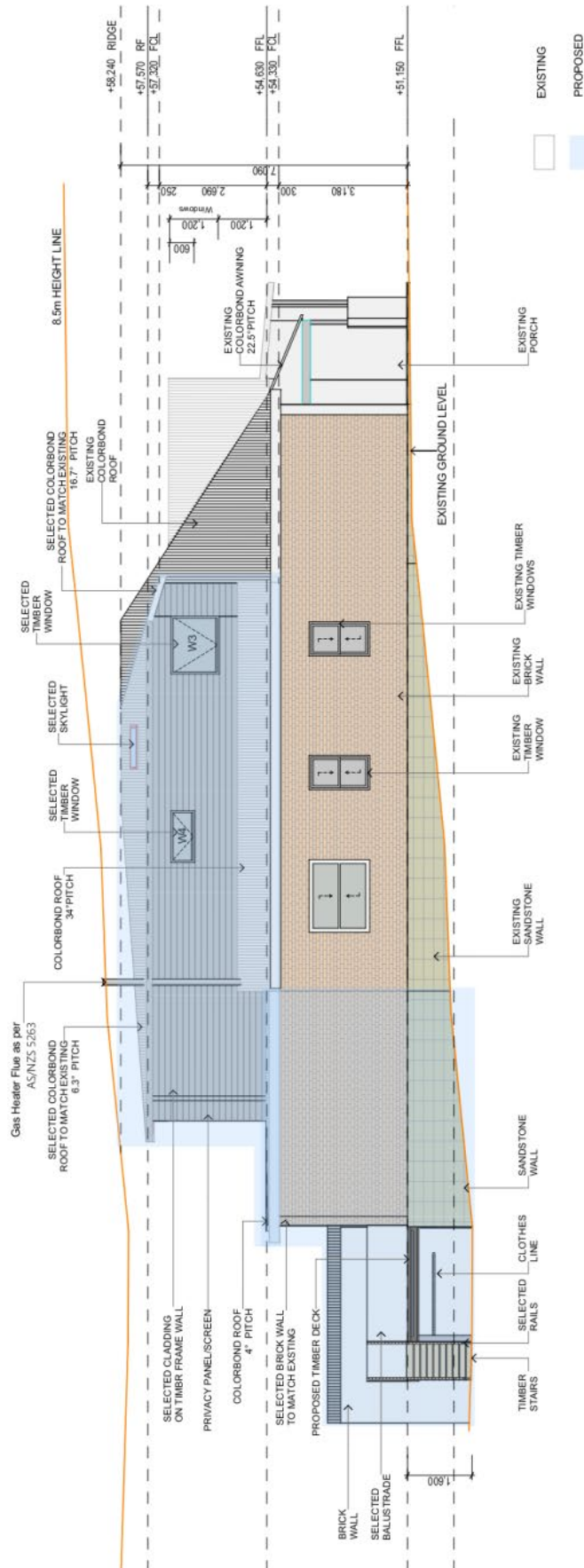
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.



W-39 SITE ANALYSIS PLAN
1:200

		Project		Drawing Title		Scale	
		ALTERNATIONS AND ADDITIONS		SITE ANALYSIS PLAN		1:200	
		23 CRESCENT STREET FAIRLIGHT NSW		Client Name		23 Crescent Street Fairlight NSW	
		Lot B		Project No.		1981	
		DP-33413		Drawing No.		01	
				Date		7/03/2021	
				Issue		C	
				Description			
				DA - First Floor Roof Modification			
				Date			
				Drawn			
				Approved			


 web: www.designerbldgs.com.au
 phone: 0403488622
 email: contact@designerbldgs.com.au
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 Note: Consultants to verify all dimensions on site prior to construction. Dimensions take precedence over scale drawings. All work to engineers specifications and NCC.



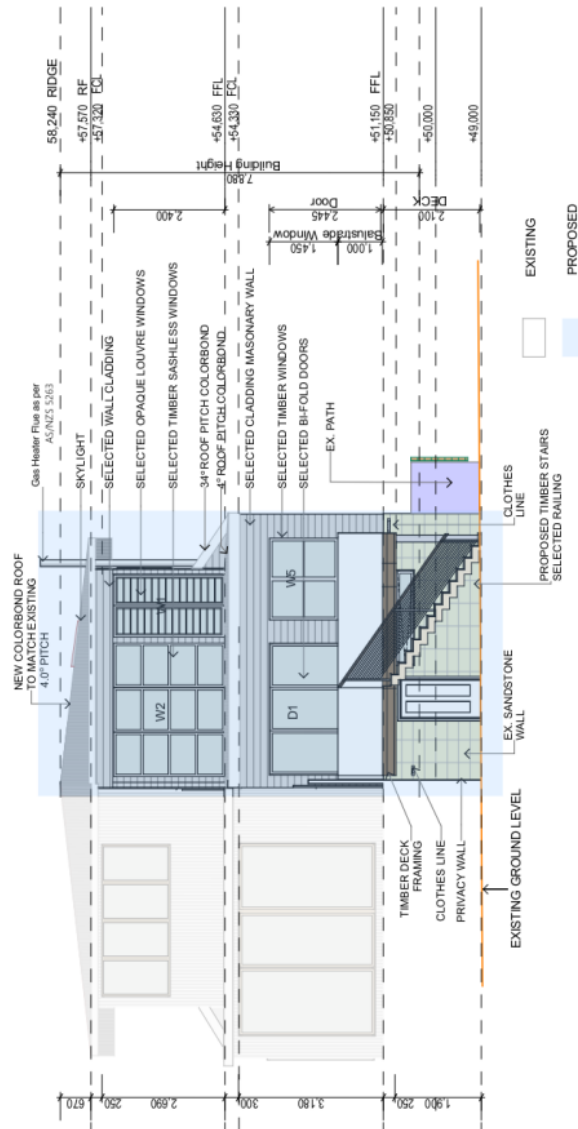
E-31 SOUTH ELEVATION
1:100

Project		Drawing Title		Scale	
ALTERATIONS AND ADDITIONS 23 CRESCENT STREET FAIRLIGHT NSW Lot B DP-33413		SOUTH ELEVATION		1:100	
Client Name		Drawing No.		Drawing Date	
Tara and Tom Lamond		1981		7/03/2021	
Size		Sheet		C	
A3		12		7/03/2021	
Issue		Description		Approved	
C		DA - First Floor Roof Modification		DG	
7/03/2021				Driven	

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 email: contact@designerbldgs.com.au
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E-32 WEST ELEVATION (2)
1:100

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CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD

Floor Space Ratio Variation

23 Crescent Street Fairlight

Clause 4.6 (Floor Space Ratio)
23 Crescent Street Fairlight

Clause 4.6 Exception to Development Standard

23 Crescent Street Fairlight

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Clause 4.6 (Floor Space Ratio)
23 Crescent Street Fairlight

1 Introduction

This clause 4.6 report accompanies a development application for a new two storey dwelling at 23 Crescent Street Fairlight

2 Clause 4.4 Floor Space Ratio - Variation Request

FSR requirement: 60%

Please note that as the site area is 215.9sqm and the minimum lot size is 250sqm and therefore the FSR is to be calculated as if the lot was 250sqm.

Proposed FSR: 62% when adjusted for the minimum lot size of 250sqm (actual FSR is 0.725:1 FSR or 156.6 sqm)

Variation Requested: 4%

The request seeks exception to a development standard under clause 4.6 - Exceptions to Development Standards of Manly Local Environmental Plan 2013. The development standard for which a variation is sought is that of Floor Space Ratio restriction contained within Clauses 4.4. The proposed alterations and additions seek a minor departure from the development standard to create a first floor extension for the existing dwelling that is of a size that is suitable for the owners. The proposed development is 6.6sqm over the maximum GFA for the site and is considered minor. It is noted that variations within the Fairlight locality have been approved with much greater non compliances.

It is noted that the Manly Development Control Plan states the following in relation to FSR:

The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3).

The subject site is under the minimum lot size (250sqm) and therefore the following variation request is provided to justify the non-compliance with the development standard.

The variation has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP & I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant, principles identified in the *Wehbe v Pittwater Council [2007] NSWLEC 827*

Clause 4.6 Exceptions to development standards establishes framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) are as follows:

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

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

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

Clause 4.6 (Floor Space Ratio)
23 Crescent Street Fairlight

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

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

(a) the consent authority is satisfied that:

(i) the applicants written request has adequately address 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

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

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

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

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

A detailed assessment has been carried out below:

2.1 What is the Development Standard proposed to be varied?

Clause 4.4 of the Manly LEP provides the following development standard in relation to Floor Space Ratios.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

Objectives of clause 4.4

The objectives of clause 4.4 are as followed:

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

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

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

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

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

Clause 4.6 (Floor Space Ratio)
23 Crescent Street Fairlight

2.2 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In determining this, the 5 Part test established in *Wehbe v Pittwater Council [2007] NSWLEC 827* has been utilised as a guide

1. Is the proposal consistent with objectives of the standard notwithstanding non-compliance;

The proposal, despite non-compliance with Clause 4.4(2) of the Manly LEP, is considered to remain consistent with the underlying objective of the development standard as follows:

Objective A: *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment: The proposed alterations to the existing dwelling has been designed to be compatible with the character of the area as shown in the statement of environmental effects. The development consists of a first-floor extension that has been designed in a similar fashion to the adjoining semi-detached dwelling with the extension being positioned behind the roof ridge of the original dwelling. It is considered the development is low impact compared to the surrounding developments and is considered to be consistent with the established bulk and scale of the area.

Objective B: *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment: It is considered that the dwelling has been designed to not be visually prominent with the first floor extension being located behind the existing roof ridge to minimise the bulk and scale and be in context for the streetscape.

Objective C: *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment: As mentioned above the development is appropriate for the area and the character and landscape of the area. It is considered that the proposed design of the dwelling additions will not be visually intrusive from a public place and results in a good design outcome.

Objective D: *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment: The building additions have been designed to minimise environmental impacts on adjoining land and the public domain.

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

Comment: The development does not impact the viability of the nearby business zone.

Clause 4.6 (Floor Space Ratio)
23 Crescent Street Fairlight

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

The underlying objective or purpose of the Standard is relevant. As demonstrated above, the proposal retains consistency with the objectives of Clause 4.4 of Manly Council LEP, despite non-compliance.

3. Would the underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives or purpose of the standard would not be defeated or thwarted if compliance was required however it is noted that the development proposed to be of a size that is similar to surrounding dwellings in the locality and due to the small nature of the site the FSR does not comply.

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

The standard has not been abandoned or destroyed however it is noted from Council's Clause 4.6 Variations register that the Council regularly grants consent for development despite a non compliance with the Floor Space Ratio clause 4.4.

One such development is 124 Woodland Street BALGOWLAH which approved a FSR non compliance with a 30.70% variation.

It is considered that Council will often approve FSR non compliances on small sites with site constraints such as the proposed development.

5. Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.

The zoning of the land is appropriate for the site.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The primary issue in this development application is whether there are sufficient environmental planning grounds to allow the variation to the development standard to permit the granting of consent to the application. In this regard I note the following:-

- The building has been carefully designed so as not to unreasonably impact upon the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing.
- The resulting building will be complementary to the scale and built form of neighbouring development and the emerging character of the local area.
- The development produces a better planning outcome because it will provide a more functional internal layout to an existing dwelling. As the dwelling forms part of a semi-detached dwelling the existing dwelling must be utilised.
- The variation has no material impact on the streetscape as it would not be discernible by the casual observer.

Clause 4.6 (Floor Space Ratio)
23 Crescent Street Fairlight

For the above reasons, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for floor space ratio.

The proposed development is considered to appropriately address and respond to the relevant matters for consideration under S4.15(1) of the EP&A Act 1979.

Specifically, it is considered that the development has been designed in accordance with the objectives outlined in section 1.3 of the EP&A Act 1979 as followed:

***Object (b)** to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Comment: The proposed development is for the construction of a first floor extension and a minor extension to the ground floor of the existing dwelling that has been designed to maximise the site with the designed being modest in relation to the development and is considered to be a good economic and social use for the subject site.

The proposed development has been designed to minimise the impact on the site and on the adjoining neighbours while providing a visually attractive dwelling that promotes a good design for the streetscape.

***Object (g)** to promote good design and amenity of the built environment,*

Comment: The proposed development has been designed to improve the appearance of the dwelling through architectural features but not result in a visually intrusive development. It is noted that the design of the dwelling is in context to the future character of the area.

It is considered that there are sufficient environmental planning grounds to justify the non-compliance with the development standard as provided above. Additionally, the development complies with the outcomes of the Residential zone.

2.3 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the standard and zone as set out above.

There is public benefit in maintaining a degree of flexibility in specific circumstances, particularly when site constraints warrant a variation and the development is still able to achieve the outcomes of the control. In the current case, strict compliance would limit the development potential of the site and limit the lifestyle of the occupants of the dwelling. As identified above, the development achieves the outcomes of the development standard and is considered to be in the public interest.

3 Conclusion

The proposal produces an appropriate environmental planning outcome which is equal to a compliant proposal in terms of local character and compatibility. The proposed dwelling will sit within a local environment dominated by low density housing in the form of detached and semi-detached dwellings. This character will be retained as a result of the proposed development.

Clause 4.6 (Floor Space Ratio)
23 Crescent Street Fairlight

Furthermore, the floor space variation of 6.6m² (4%) is relatively minor in the context and would be undiscernible to the casual observer. The overall development is design is of good architectural quality and excessive bulk and scale is not apparent.

As there is no material adverse impact on adjoining properties or the public domain arising from the variation to the floor space ratio development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard.

ITEM 3.6 **DA2020/1667 - 80 HILMA STREET COLLAROY PLATEAU -
DEMOLITION WORKS AND THE CONSTRUCTION OF A
DWELLING HOUSE INCLUDING SWIMMING POOL**

REPORTING MANAGER Rod Piggott
TRIM FILE REF 2021/199538
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 DA2020/1667 for Demolition works and the construction of a dwelling house including swimming pool on land at Lot 33 Sec L DP 33000, 80 Hilma Street, Collaroy Plateau, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1667
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 33 DP 33000, 80 Hilma Street COLLAROY PLATEAU NSW 2097
Proposed Development:	Demolition works and the construction of a dwelling house including swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Amber Caprice Fanning Gene Patrick Walker
Applicant:	Richard Carr
Application Lodged:	30/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	15/01/2021 to 29/01/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 808,000.00

Executive Summary

Development Application no. DA2020/1667 is submitted to the Northern Beaches Council (the Council) seeking consent for demolition works and the construction of a new detached dwelling house and swimming pool on Lot 33 Sec L in DP 33000, commonly known as 80 Hilma Street, Collaroy Plateau (the Site).

One of the two owners of the site is a employee by the Council but is not principally involved in exercising the functions of the Environmental Planning and Assessment Act 1979 (the Act) and

therefore the Council's 'Management of Conflicts of Interest' matrix is relevant. That matrix permits an Officer level assessment of the application as lesser than 4 objections have been received, but requires determination to be by the Development Determination Panel (DDP).

Development for the purpose of a dwelling house is permitted with consent pursuant to the Warringah Local Environmental Plan 2011. The proposed development fails to achieve numerical compliance with several Built Form Controls from the Warringah Development Control Plan 2011 including the side boundary envelope, side boundary setbacks, front boundary setbacks and landscaped open space, but succeeds in achieving the objectives of those respective clauses and is thus, recommended for approval.

Throughout the notification period of the application two submissions were received from both adjoining neighbours (nos. 78 and 82 Hilma Street, Collaroy Plateau. The objections raised from no. 78 Hilma Street were resolved by way of a revised landscaping plan and an agreement that a Pre and Post Construction Dilapidation Report be produced. No. 78 Hilma Street subsequently withdrew their submission.

No. 82 Hilma Street raised concerns primarily about the retention of the existing boundary fence which was to be replaced and excavation impacts. The latter has been addressed via a new Geotechnical Investigation. No agreement could be reached between the two sites on what works shall take place to the boundary fence and, as it is in mutual ownership, this element has been deleted from the proposal by way of condition.

On balance it is concluded that the works represent an appropriately proportioned and designed dwelling house that shall achieve compatibility with the evolving streetscape of Hilma Street and is therefore worthy of approval.

PROPOSED DEVELOPMENT IN DETAIL

The Development Application seeks Development Consent for the demolition of the existing house on site and for the construction of a new dwelling with an in-ground swimming pool. The works include the following:

Lower Ground Level (RL 94.83)

- Excavation works to create a double lock up garage, storage space and entry into the house;
- Construction of a detached bin store;
- Construction of a new driveway and pathways.

Ground Floor Level (RL 97.59)

- Construction of a ground floor inclusive of one large open plan living / kitchen / dining space opening up to a front balcony and rear alfresco space;
- Construction of an outrigger along the southern boundary to accommodate one bathroom and a laundry;
- Excavation works to the rear garden to accommodate a 38,000L in-ground swimming pool;
- Construction of new paving and steps to the rear garden.

First Floor Level (RL 100.69)

- Construction of a first floor level atop of the ground floor level including a projection to the west

to cover the alfresco space. First floor inclusive of one master bedroom with walk-in-robe and ensuite, three secondary bedrooms, one bathroom and one living space. A balcony is proposed to the front of the dwelling.

Roof

- Construction of a double skillion corrugated metal deck roof at 12 degree fall to gutter, reaching a maximum height of RL 104.65 for the southern portion of the roof, and a 6.4 degree fall to the northern edge accommodating solar panels.

The house is to be finished in stone cladding, natural-looking timber cladding and charcoal colour vertical cladding with aluminium framed glazing.

Herein this report the works are described as the 'development.'

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 - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 33 DP 33000 , 80 Hilma Street COLLAROY PLATEAU NSW 2097
Detailed Site Description:	The subject site is legally identified as Lot 33 Sec L DP

33000 and is known as 80 Hilma Street, Collaroy Plateau.

The site falls within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011 (**WLEP**). The site also falls within the Land Slip Risk Map Area A pursuant to the WLEP.

The site is exactly rectangular in shape with a width of 10.67m and a depth of 39.625m equating to a total surveyed area of 422.7m². Such dimensions are common and repeated along the western side of Hilma Street.

Presently the site accommodates a single storey detached brick cottage with tiled roof and under-house parking. The house currently accommodates two bedrooms and a loft space in the roof. Vehicular access is from a crossover onto Hilma Street.

Topographically the site inclines from west to east by around one metre from kerb to front boundary and a further 4.0m from the front to rear boundary. The majority of the slope is present in the front garden. There are no evident rock outcrops on the site.

The site has some landscaping throughout, generally limited to a cluster of palm trees to the western edge of the site. None of the vegetation present is thought to constitute as a threatened species.

Description of surrounding developments

Hilma Street and the wider Collaroy Plateau locale is undergoing a significant period of gentrification, where older brick cottages are being replaced with large two / three storey dwelling houses.

South of the site at no. 78 Hilma Street Avenue to the south is a small weatherboard cottage, but has recently obtained approval for demolition works and the construction of a dwelling house (DA2019/0406, 12 July 2019). Further south at no. 76 is a three / four storey new dwelling house.

North of the site is no. 82 Hilma Street which is a single storey brick dwelling with underground parking. Further north, no. 84 is of a similar scale and design to no. 82 but is timber clad. This property has recently gained approval for a basement extension, ground floor extension including a swimming pool and for the construction of a new first floor (DA2016/0335, 26 July 2019). Further north again at no. 86 is a large modern part two / part three storey dwelling house that has recently been completed.

Due east of the site and across Hilma Street is no. 71 Hilma Street which is a single storey linear block containing four

townhouses. This land use is an anomaly within the R2 zone and is not a permitted use under current zoning restrictions.

Due west of the site to the rear is no. 37 Idaline Street, Collaroy Plateau. This is part one / part two storey dwelling house.

The wider surrounding area comprises a mix similar to the above - smaller cottages and larger modern homes.

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:

- **DA2018/0908** for the removal of one (1) tree - granted by Council on 13 June 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 (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

Section 4.15 Matters for Consideration'	Comments
	13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to 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 of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 Matters for Consideration'	Comments
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 15/01/2021 to 29/01/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
John Patrick Sowter	65 Kingshill Road MULGOA NSW 2745
Mr Stuart Paris	78 Hilma Street COLLAROY PLATEAU NSW 2097

In preface to this report, it is noted that one of the property owners is an employee of the Northern Beaches Council in the Construction and Maintenance Department. In accordance with Council's Management of Conflicts of Interest matrix, the application may still be officer assessed and determined under the Development Determination Panel. The owner is not involved in planning matters and is a non Planning staff member.

During the course of the assessment one of the submissions detailed above (Paris) was withdrawn.

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

- Building exceeding 8.5m height limit
- Frangipani tree
- Existing boundary fence damage
- Excavation impacts and soil erosion

The matters raised within the submissions are addressed as follows:

- **Building exceeding 8.5m height limit**
Comment: The submission received states that the building is over the 8.5m height limit but

does not identify any impacts caused by this breach. Clause 4.3 of the Warringah Local Environmental Plan 2011 prescribes an 8.5m building height above existing ground level. The development complies with this limit. The sectional drawings submitted do show elements of the building above the 8.5m line, however these elements are generally roof in the background and have been assessed as being compliant. Therefore this matter does not warrant the refusal of the application.

- **Frangipani tree**

Comment: The submission received raises concern that the planting of a frangipani tree will eventually lean over the boundary and drop leaves into the neighbouring property. This is not a matter that warrants refusal and should be addressed in a civil manner in the future if and when this may occur. It is noted that the tree could be planted without any development consent.

- **Existing boundary fence damage**

Comment: The submission received objects to the demolition of the existing boundary fence and replacement with a new fence. On site it was observed that this existing cinder block fence was leaning into the subject site and that replacement would be preferable, however as the adjoining property owner would not provide owners consent for the replacement of this boundary fence (of which is mutually owned) a new fence on the boundary cannot be approved. Therefore, a condition is imposed on the recommendations of this report stating that no approval is granted for any boundary fencing under this Development Consent. This condition does not preclude the owners from entering into a civil agreement under the Dividing Fences Act 1991 and constructing a new fence pursuant to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, should those codes apply to the site.

The matter is therefore resolved by way of condition.

- **Excavation impacts and soil erosion**

Comment: The submission received raised concern regarding the excavation impacts of the development and the potential for soil erosion. The Council requested that the applicant provide a Geotechnical Report in support of the application to provide recommendations to prevent these impacts. Such report was provided to Council on 10 March 2021 and forms a part of the recommendation of this report (see Condition 1).

The matter is therefore resolved by way of additional information and supplementary condition.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the demolition of an existing residential dwelling, and the construction of new residential dwelling with accompanying swimming pool and landscape works.</p> <p>Councils Landscape Referral section has considered the application against Warringah Local Environment Plan, and the following Warringah DCP 2011 controls:</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting

Internal Referral Body	Comments
	<ul style="list-style-type: none"> E1 Preservation of Trees and Bushland Vegetation <p>A Landscape Plan is provided with the application and proposed works include the in-ground planting of trees, shrubs and grasses.</p> <p>The Statement of Environmental Effects provided with the application notes that a total of two trees are to be removed as a result of the proposed works. These two trees have been identified as Trees No.1 and 8. Tree No.1, assumed to be a <i>Banksia</i>, is located towards the rear of the property adjacent to the northern boundary and within the footprint of the proposed swimming pool. The proposed works would necessitate the removal of this tree. Tree No.8, identified as a <i>Magnolia</i>, is located at the front of the property within close proximity to the proposed dwelling location. The proposed works would also necessitate the removal of this tree. At minimum, both Tree No.1 and 8 should be replaced to compensate for the loss of landscape amenity, and to effectively mitigate the bulk and scale of the proposed built form. It is noted that the Landscape Plans propose an <i>Acer palmatum</i> at the front of the property to replace the existing tree removed, however this shall be replaced with a locally native species capable of reaching a minimum height of 8.5m when mature. It is vital that the vegetation proposed help mitigate the bulk and scale of the built form in order to satisfy control D1.</p> <p>The Architectural Plans provided indicate an additional four trees are to be removed. It is noted that these trees, Tree No. 2, 3, 4 and 5, have been identified as palms and as a result are exempt and do not require Council's approval for removal. The remaining two trees at the property, Trees No.6 and 7 have been noted as retained. These shall be protected in order to satisfy control E1, which aims to "protect and enhance the value and character that trees provide".</p> <p>The landscape component of the proposal is therefore acceptable subject to the protection of existing trees, and the completion of landscape works as proposed on the Landscape Plans inclusive of proposed tree species changes and an additional tree to compensate those removed.</p>
NECC (Development Engineering)	<p>8/02/2021: Development Engineer have been requested to provide comments on the proposed development.</p> <ul style="list-style-type: none"> Site area is less than 450 Sqm, therefore no OSD is required. Stormwater plans by Taylor Consulting, dated 9th Dec 2020, sheet-1/A are satisfactory. In the proposal driveway location is to remain same, but driveway slab and layback needs to be reconstructed. The extent of excavation for the proposed basement is more than 2m deep, a preliminary assessment of land conditions is required.

Internal Referral Body	Comments
	<p>Applicant is requested to provide a Preliminary Assessment of Land Conditions.</p> <p>11/03/2021:</p> <p>Approval, with conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. Ausgrid raised no objections or conditions to the development application.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1153562S dated 11 December 2020). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0005491741 dated 10 December 2020).

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

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

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

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. Ausgrid raised no objections or conditions to the development application.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	8.5m (to RL 104.65, existing ridge is RL 103.15)	Yes

Compliance Assessment

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies

B1 Wall height	7.2m	6.75m	-	Yes
B3 Side Boundary Envelope	North - 5.0m	Two encroachments at: 0.13m in height for a length of 1.7m; and 0.22m in height for a length of 1.89m	Up to 4.4%	No
	South - 5.0m	One encroachment at 0.45m in height and for a length of 5.7m	9%	No
B5 Side Boundary Setbacks	North - 0.9m	House - 0.96m	-	Yes
		Swimming Pool - 1.1m	-	Yes
		Side Path / Stair - Nil	100% (0.9m)	No
		First Floor Eave - 0.36m	60% (0.54m)	No
	South - 0.9m	House - 0.85m - 0.9m	5.6% (0.05m)	No
		Side Path / Stair / Bin Room - Nil	100% (0.9m)	No
		First Floor Eave - 0.3m		
B7 Front Boundary Setbacks	East (Hilma Street) - 6.5m	Lower Ground - 6.5m	-	Yes
		Bin Room - 3.3m	49.3% (3.2m)	No
		Ground Floor - 6.5m	-	Yes
		Ground Floor Balcony Awning - 5.9m	9.3% (0.6m)	No
		First Floor - 7.7m	-	Yes
		First Floor Balcony - 6.5m	-	Yes
B9 Rear Boundary Setbacks	West - 6.0m	House - 13.7m - 20.7m	-	Yes
		First Floor Cantilever - 11.2m	-	Yes
		Swimming Pool - 9.2m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (169.08m ²)	37.4% (158m ²)	6.6% (11.08m²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

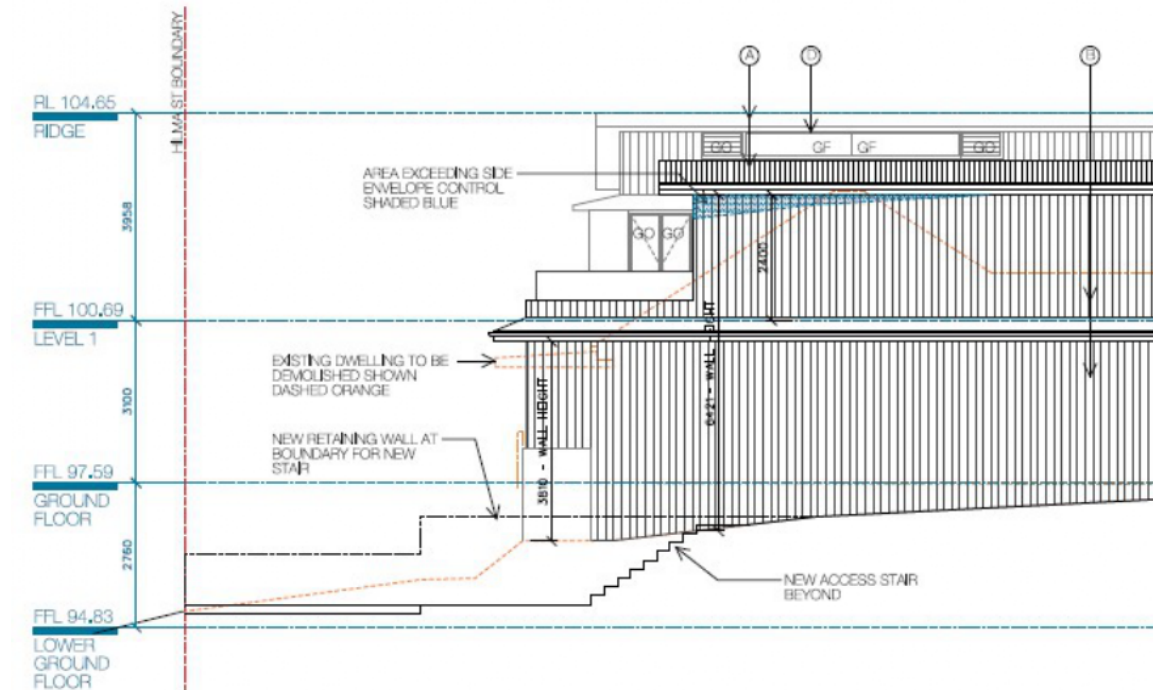
B3 Side Boundary Envelope

Description of non-compliance

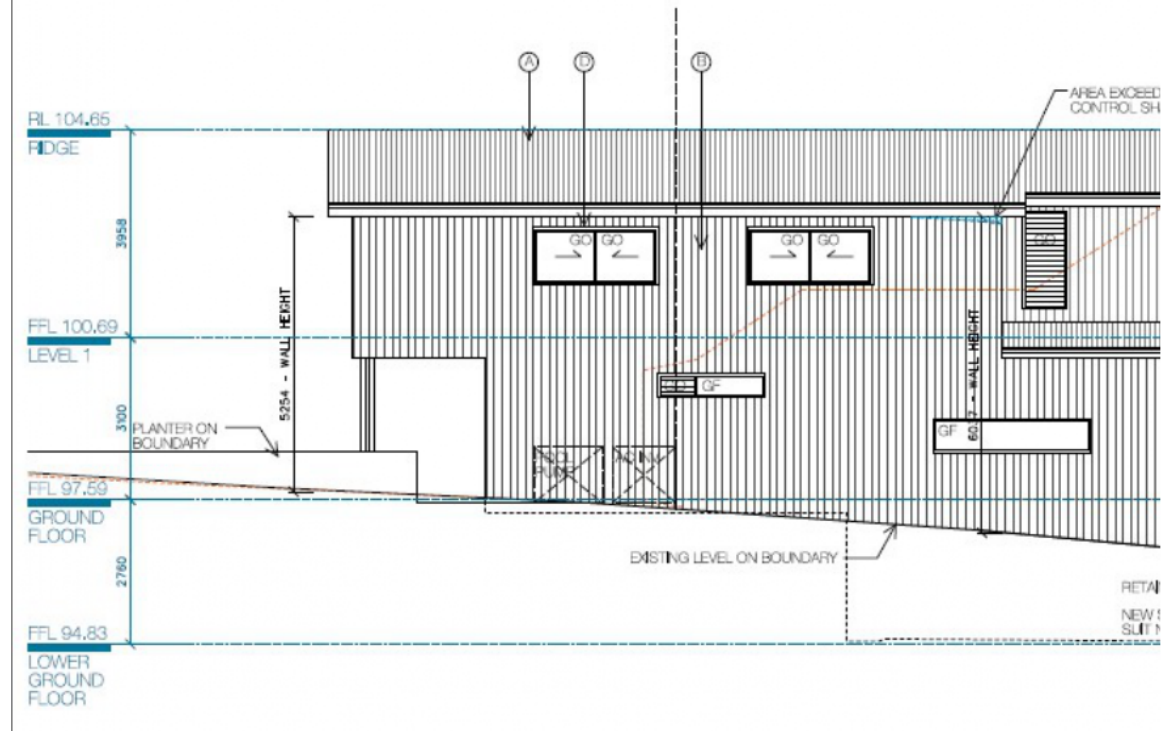
Part D3 of the WDCP 2011 prescribes a 5.0m side boundary building envelope to both the northern and southern elevations of the proposed dwelling. Both these two elevations have minor (less than 10%) non-compliances to the envelope control as detailed in the Built Form Control table earlier in this report, and as shown on the northern and southern elevational plans by Rich Carr Architects. An extract of those plans is copied below, showing the proposed non-complying areas in a blue hatch:



North Elevation



South Elevation



Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment: The development remains compliant with the relevant wall height and building height control, and the areas exceeding the building envelope are tapered towards the front edge of the house where the land falls to the street level. The areas of encroachment and the front facade of the building are well articulated and modulated and do not present as a visually dominant form.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment: The provision of neighbour amenity has been assessed as compliant in accordance with the Part D controls of the WDCP 2011, and it is found that the side boundary envelope breach sought does not result in any unreasonable impacts to neighbours.

- *To ensure that development responds to the topography of the site.*

Comment: The development is designed in a manner which is considered to adequately respond to the topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 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.

B5 Side Boundary Setbacks

Description of non-compliance

Part B5 of the WDCP prescribes a minimum side building setback of 0.9m. The proposed development fails to achieve this setback and instead proposes the following setbacks:

House

- North - 0.96m
- South - 0.85m - 0.9m

The southern flank elevation of the proposal therefore encroaches the setback.

Secondary to that, several other elements of the proposal also encroach the setback area as follows:

- Side pathways / external stairs - nil
- Bin room - nil
- First floor eaves - 0.3m +

Merit consideration

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

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

Comment: In the circumstances of the site it is not deemed necessary nor appropriate to have deep soil landscaped areas down either side of the house, given that this space should be kept for maintenance and access. Therefore, the only structure within the side setback area that could inhibit opportunities for deep soil landscaping is the bin room to the front garden. The location that this is in is directly adjacent to the driveway which largely restricts the opportunity for large vegetation and, the benefit of screening bins from the public domain outweighs the shortfall in deep soil landscaping.

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

Comment: The encroachments of the house proposed into the side boundary setback area are largely non-discernible from the public domain as they are limited to 5cm. The bin room and side stairs are visible, however they are not elements that are considered uncommon in a residential street. Thereby, the development is not considered to become visually dominant.

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

Comment: The bulk and scale of the proposed dwelling is considered to be appropriate for the context of the site.

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

Comment: Notwithstanding the variations proposed to the control requirements, it is considered that the proposal provides adequate spatial separation between buildings to ensure that an appropriate level of amenity can be maintained.

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

Comment: Views are discussed in Part D7 of this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 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.

B7 Front Boundary Setbacks

Description of non-compliance

The site is subject to a 6.5m front boundary setback requirement which seeks to keep this area (measured from the front boundary line) to be generally free of structures. The proposed bin room is

positioned 3.3m from the front boundary and therefore contravenes the control by 49.3%, and the awning structure over the ground level balcony is positioned 5.9m from the front boundary, thereby resulting in a second contravention of 9.3%.

However, Requirement 2 of this clause reads as follows (emphasis added):

- *The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities **other than driveways, letter boxes, garbage storage areas and fences.***

Therefore the bin structure is exempt from the provisions of this control, however for consistency it is still considered in the below merit assessment against the control objectives.

Merit consideration:

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

- *To create a sense of openness.*

Comment: The proposed development is significantly larger in scale than the existing house on site, however this does not inherently mean that it would detract from the existing sense of openness. The predominantly bulk of the building complies with the front setback requirement (with the exception of the front awning and bin room) and, at ground and first floor levels, open balconies face the street. It is considered that predominant compliance with the control, and the presence of street-facing balconies at both upper levels is the optimum design solution to both maintain and create a sense of openness. In furtherance to this, the proposal is also commensurate to the proportions and setbacks of other contemporary homes within the streetscape and therefore contributes to an evolving streetscape character and sense of openness.

The bin store within the front setback area is minor in scale commensurate to the size of the house and neighbouring properties and is therefore not considered to detract from a sense of openness.

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

Comment: The proposed development is to sit slightly inward the site of the existing dwelling on the site, and slightly inward of the house to the north. It is not uncommon for dwellings along the western side of Hilma Street to have minor structures within the front setback area including bins, retaining walls, fencing and the like. A bin store itself is not a necessary component of a dwelling pursuant to the WDCP and could therefore be deleted from the plans, however the addition of an enclosure is considered to screen unsightliness and is a better outcome for the street than having no fixed structure to store the bins.

Similarly, the subject awning above the ground level balcony encroaches the front setback area by 0.6m but is elevated some 5.51m above the driveway level. It is a common feature of the original dwellings along this street to have a similarly designed front awning projection, as seen at nos. 74, 80, 82, 84 and 94 Hilma Street. Therefore, this modern reinterpretation of the original character is deemed to be a positive element of the scheme and contributes to maintaining visual continuity. Accordingly, whilst varying the control requirements, this objective is achieved.

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

Comment: The traditional form of buildings along Hilma Street and in the wider Collaroy Plateau area is a key characteristic of the locale, however the inevitable shift to larger new dwellings to accommodate contemporary lives is changing this character and streetscape. The scale and design of this house is compatible with other newer houses within the area, but also harks on the original characteristics of the street as described above with the front awning. So much so is this development seeking to preserve the character that the front awning which is the subject of this assessment is at an almost identical level to that in the existing house (existing RL 100.25 and proposed RL 100.29, and RL 100.89 at adjoining no. 82 Hilma Street). This level of detail in a contemporary design should be commended and demonstrates that the design is seeking to protect and enhance the streetscape, thus achieving conformity with this objective.

- *To achieve reasonable view sharing.*

Comment: The two encroachments into the front boundary setback area are not deemed to result in the loss of views from neighbouring private properties or from the public domain as the bin room is lesser than the height of a boundary fence; and as the awning is to the front of the house and projects only 0.6m from a large wall.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Part D1 of the WDCP prescribes a minimum landscaped to site area ratio of 40% equating to an actual area of 169.08m² in this case. The control permits the surface area of a swimming pool to be included within the 40% landscaped ratio.

The proposal fails to achieve the prescribed ratio and proposes 158m² (or 37.4%) landscaping, representing a 6.6% variation to the control requirements.

Merit consideration

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

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

Comment: To the front garden of the house the site will accommodate a turfed lawn with stone stepping pavers, a 1.1m wide planter bed, a new maple tree of a 1.2m high stone front fence. Each of these elements is complementary to the architecture of the host dwelling. The rear garden is not visible from the street.

From a streetscape perspective, the proportions of the front garden are similar to others along Hilma Street and to the existing development on site.

Therefore, by way of mimicking the proportions of front gardens along the street and utilising compatible materials and new plants, it is considered that the front garden will enhance the streetscape.

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

Comment: At present the site is not considered to have any high value vegetation that provides irreplaceable habitat for wildlife. The development includes the establishment of several dense areas of planting throughout the site which provides opportunities for the establishment of indigenous vegetation, and for the creation of habitats for wildlife of varying size and species.

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

Comment: The three primary landscaped areas in the site are all of sufficient scale to accommodate the establishment in longevity of vegetation of varying sizes and species to help mitigate any perceived bulk and scale of the building.

- *To enhance privacy between buildings.*

Comment: The shortfall in landscaped open space is not considered to result in any unreasonable impact to the provision of privacy enjoyed by neighbours or future occupiers. The rear garden is surrounded by 4m high (at maturity) viburnum hedging which will significantly obstruct views into the private open spaces of adjoining properties.

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

Comment: The site retains turfed areas of sufficient proportions to accommodate outdoor recreational opportunities that meet the needs of occupiers.

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

Comment: The site retains turfed and hard-surfaced areas of sufficient proportions to accommodate service functions, including clothes drying.

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

Comment: The site has adequate permeable surfaces, combined with a stormwater concept approved by the development engineering team, to ensure that water management and the natural infiltration of stormwater into the ground can occur.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 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

Part D7 of the WDCP 2011 requires that development shall provide for the reasonable sharing of views,

and refers to the Land and Environment Court Case *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*. It is noted that no submissions were received that objected on the grounds of view loss, however given the increase in scale of the property and the opportunity for easterly views of the ocean, it is warranted to consider the proposal in light of the requirement.

It is understood that the adjoining properties to the western side of Hilma Street could enjoy panoramic views Long Reef Golf Course to the south and along Collaroy and Narrabeen Beaches to the north. These views are evident on the street itself and from available real estate photographs. Notwithstanding the potential for these panoramic views, this is not the case for the majority of houses given other built development and established vegetation.

Nos. 78 and 82 Hilma Road (to the south and north respectively) have a primary aspect to the east, as evidenced by the large street facing balconies that are elevated above kerb level. Such a pattern is repeated throughout Hilma Road, particularly where newer dwellings have been constructed.

The front setback of the proposed dwelling generally follows the prevailing alignment of buildings, and largely mimics the setback of the existing dwelling on-site. The works proposed will have no obstruction to these properties easterly views and, given the consistency with alignment, is unlikely to cause any unreasonable impacts to northeasterly or southeasterly views.

To the west sits no. 37 Idaline Street. No. 37 is a part one / part two storey detached dwelling house with a large elevated ground floor balcony facing eastwards, and first floor eastern facing windows above. Given the period from when the site had a last development application (almost 20 years) it is likely that the upstairs room layout has been modified / changed, but it is generally considered that those rooms would be bedrooms.

A 2012 survey from the development of an adjoining site marks the ground floor balcony of having a balustrade level of RL 100.03, and thus it is reasonably assumed that the floor level of the balcony is one metre lesser. From this level it is highly unlikely that any water or horizon views are obtained atop of or to the side of the existing dwelling at no. 80 Hilma Street, as the existing gutter level of at RL 100, and the ridge is at RL 103.15. From the first floor windows the views would also be significantly obstructed by the existing house and, to a greater degree, would be obstructed by the large trees along the western boundary.

On balance it is considered that the works will have a negligible impact to the existing provision of views enjoyed from nos. 78 and 82 Hilma Street. To the west, if the development is to have any impact to the views enjoyed from no. 37 Idaline Street (if any) then it is considered that that impact would be minor commensurate to the existing situation and would not be of such a magnitude that would necessitate the redesign of the proposal.

Accordingly, the proposal is deemed to satisfy the requirements and objectives of Part D7 of the WDCP.

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 \$8,080 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$808,000.

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;
- 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

The proposed development complies with all relevant provisions of the relevant State Environmental Planning Policies and the Warringah Local Environment Plan 2011. Where there are variations to the provisions of the Warringah Development Control Plan 2011, the variations have been adequately demonstrated to succeed against the objectives of those clauses.

The development is found to result in no unreasonable visual impacts or amenity impacts to surrounding occupiers or from the public domain.

The application is referred to the DDP as an objector raises concerns about leaves falling from a frangipani tree into their garden and because an agreement could not be reached on modifications / replacements to the boundary fence. These matters have been addressed in the 'Notification' section of this report and, where validated, addressed by way of condition as included within the recommendations of this report.

The proposed development is similarly proportioned and designed to other new dwellings within the locale and, unlike some new dwellings, pays homage to the original architectural characteristics of Hilma Street which will, subtly, allow the new building to blend with the new and old improvements

throughout the street.

The proposal is recommended for approval subject to conditions, provided in accordance with the Environmental Planning and Assessment Act 1979 and accompanying Regulations. The proposal satisfies the appropriate control objectives and all processes and assessments have been satisfactorily addressed.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/1667 for Demolition works and the construction of a dwelling house including swimming pool on land at Lot 33 DP 33000, 80 Hilma Street, COLLAROY PLATEAU, 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
DA-1101 Issue A	10 December 2020	Rich Carr Architects
DA-1102 Issue A	10 December 2020	Rich Carr Architects
DA-1103 Issue A	10 December 2020	Rich Carr Architects
DA-1104 Issue A	10 December 2020	Rich Carr Architects
DA-1201 Issue A	10 December 2020	Rich Carr Architects
DA-1202 Issue A	10 December 2020	Rich Carr Architects
DA-1301 Issue A	10 December 2020	Rich Carr Architects
DA-1302 Issue A	10 December 2020	Rich Carr Architects
DA-1303 Issue A	10 December 2020	Rich Carr Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
Sheet-1/A Stormwater Management Plan	09 December 2020	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1153562S	11 December 2020	Rich Carr Architects
NaTHERS Certificate No. 0005491741	10 December 2020	Integreco

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-1601 Issue A	10 December 2020	Rich Carr Architects

Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management Plan	08 December 2020	Richard Carr

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

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

2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in

progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works

commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

 - (i) Swimming Pools Act 1992

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$8,080.00 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 \$808,000.00.

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

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

5. **Security Bond**

A bond (determined from cost of works) of \$2,000 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

6. **Stormwater Disposal**

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

Applicant must install a rainwater tank of 3500lt capacity on the site (BASIX). The stormwater from the site will be discharged into the kerb & gutter in Hilma Street.

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

7. **Amendments to the approved plans**

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

- All references to boundary fencing are to be deleted. For clarity, nothing in this consent shall authorise the erection of any boundary fencing.

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

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

8. **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.

9. **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.

10. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

11. **Tree Removal within the Property**

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

- i) *Banksia sp.*, located towards the rear of the property adjacent to the northern boundary within the proposed swimming pool footprint, Tree No.1,
- ii) *Magnolia sp.*, located at the front of the property within the proposed works footprint, Tree. 8.

Note:

- i) Exempt Species as listed in the Arboricultural Impact Assessment of the Development Control Plan do not require Council consent for removal,
- ii) Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

Reason: To enable authorised building works.

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. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

14. **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.

15. **Waste Management Plan**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Pre-Construction Dilapidation Report**

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

Property / Properties:

- o 78 Hilma Street, Collaroy Plateau; and
- o 82 Hilma Street, Collaroy Plateau

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. 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 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.

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.

18. Condition of Trees

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

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

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

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

Reason: Protection of trees.

19. Road Reserve

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

Reason: Public safety.

20. 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.

21. **Vehicle Crossings**

The Applicant is to construct One vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 2 NH 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.

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**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

- i) replace the proposed *Acer palmatum* 'Seiryu' with a locally native alternative that is capable of reaching a minimum height of 8.5m once mature. Suggested alternatives include: *Angophora costata*, *Banksia integrifolia* or *Melaleuca linariifolia*,
- ii) at minimum, and addition 1x small tree shall be proposed at the rear of the property to compensate the loss of existing trees removed and to provide additional screening and built form mitigation,

Tree planting shall be located within a 9m² deep soil area within the site and be located a minimum of 3 metres from existing and proposed buildings.

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.

Native tree planting species shall be selected from Council's list, specifically *Native Plant Species Guide - Narrabeen Ward*: www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide

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 Final Occupation Certificate.

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

25. **Post-Construction Dilapidation Report**

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

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

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

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

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

26. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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 bushland management.

27. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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.

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

29. **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 fertilised 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 approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

30. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards

identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.





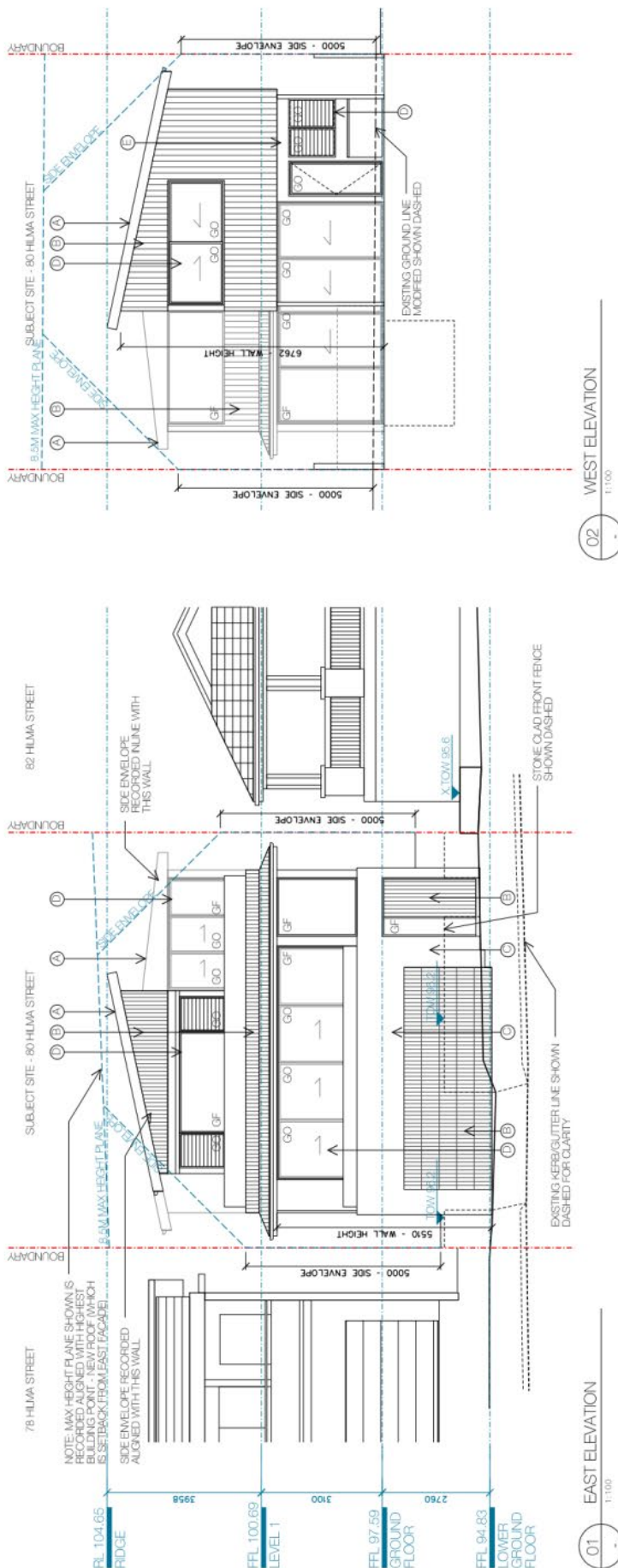
⑤ TIMBER CLADDING

① ALUMINIUM FRAMED GLAZING

© STONE CLADDING

⑧ VERTICAL CLADDING - CHARCOAL

① CORRUGATED METAL DECK ROOFING -
DARK SOLAR ABSORBANCE



02 WEST ELEVATION
1:100

01 EAST ELEVATION
1:100

 <p>RICH CARR ARCHITECTS</p> <p>RICH@RICHARCHITECTS.COM.AU T: 0430 936 919 NSW A/B: 9697 richard@richarchitects.com.au</p>		<p>project: 80 HILMA STREET, COLLAROY PLATEAU</p> <p>A: 10.12.20 DA ISSUE A</p> <p>issue: 0000 description</p> <p>COPYRIGHT ©</p> <p>This document is the property of Rich Carr Architects Pty Ltd. This drawing shall only be used for the purpose for which it was prepared. Unauthorised use of this drawing is prohibited.</p> <p>Note: This is not a final drawing. Informed consent must be given to proceed on the basis of this drawing. Any discrepancy shall be reported to the architect to allow for the commencement of any work.</p>		<p>drawing no: DA- 1301</p> <p>EAST AND WEST ELEVATIONS</p>	<p>drawing: EAST AND WEST ELEVATIONS</p> <p>scale: 1:100 @A3</p>  <p>drawing issue: A</p>
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② TIMBER CLADDING



③ ALUMINUM FRAMED GLAZING



④ STONE CLADDING

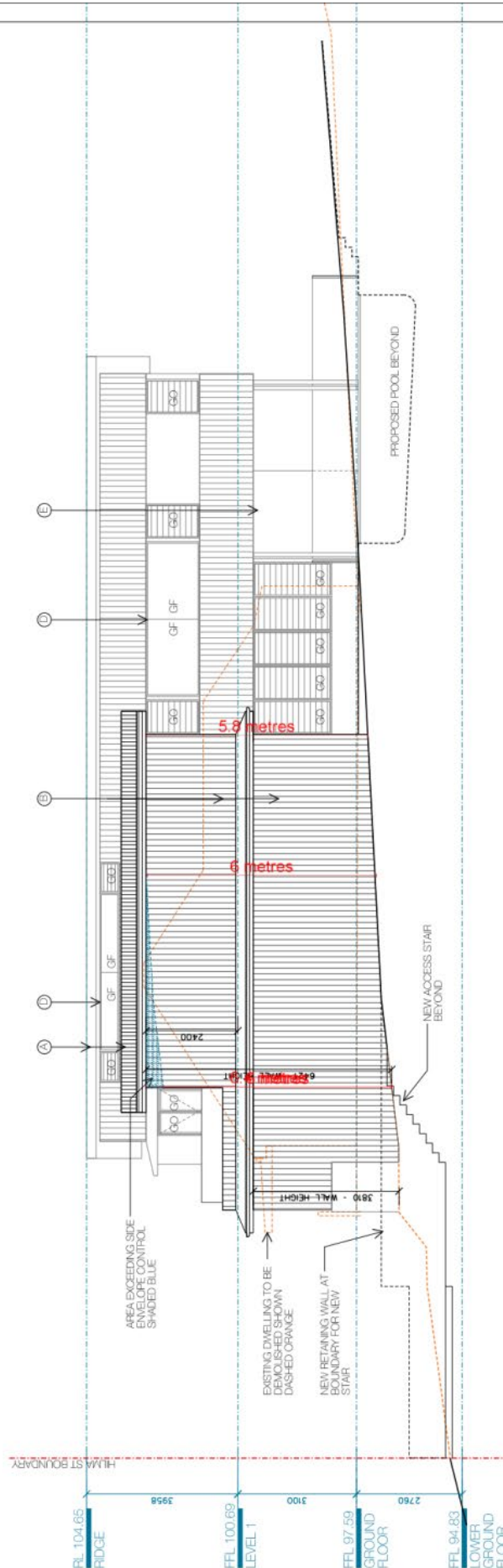


⑤ VERTICAL CLADDING - CHARCOAL



⑥ CORRUGATED METAL DECK ROOFING -
DARK SOLAR ABSORBANCE

Encroachment shown is accurate.
0.45Hx5.6L



	RICH CARR ARCHITECTS RICH.CARR@ARCHITECTS.COM.AU T: 0439 936 919 NSW AFB: 9697 E: richan@richcarrarchitects.com.au	Project: 80 HILMA STREET, COLLAROY PLATEAU	
		Issue: 10.12.20 ISSUE A	
Drawing No. DA- 1302		Drawing Issue: A	
Scale: 1:100 (BAC)		Scale: 0m 1m 2m 5m	
<small>Note: Client pays for drawings. If your dimensions and site conditions are not as shown, any discrepancy shall be reported to the Architect for clarification prior to the commencement of any work.</small>			



② TIMBER CLADDING



③ ALUMINUM FRAMED GLAZING



④ STONE CLADDING

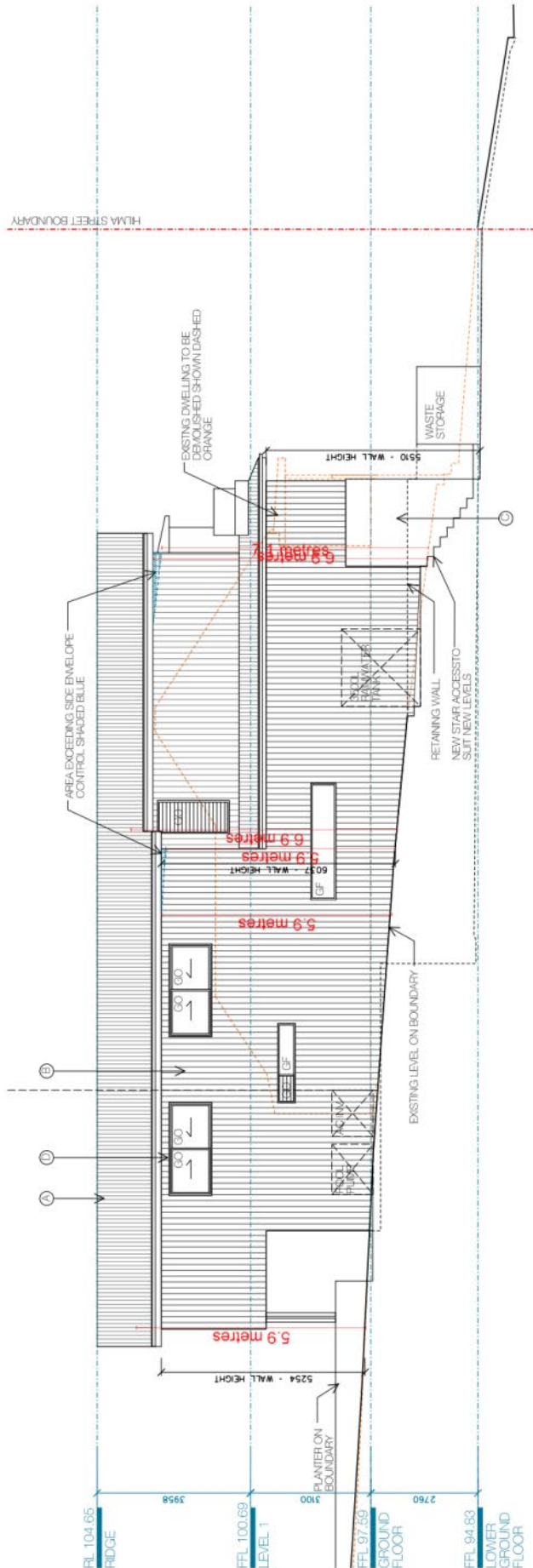


⑤ VERTICAL CLADDING - CHARCOAL DARK SOLAR ABSORPTANCE



⑥ CORRUGATED METAL DECK ROOFING - DARK SOLAR ABSORPTANCE

Encroachments shown are correct.
1. 0.13mH x 1.7mL
2. 0.22mH x 1.89L



01 SOUTH ELEVATION
1:1100

PROJECT: 80 HILMA STREET, COLLAROY PLATEAU DATE: 10.12.20 REVISION: A		DRAWING NO.: DA- 1303 ELEVATION: SOUTH
COPYRIGHT © RICH CARR ARCHITECTS RICH.CARR@ARCHITECTS.COM.AU NSW AFB: 9697 E: richan@richcarrarchitects.com.au		SCALE: 1:110 (BAC) DRAWING ISSUE: A 0m 1m 2m 5m

We warrant that the drawings, designs, specifications and other information contained herein are true and correct to the best of our knowledge and belief. This warranty shall only be used for the purposes of the relevant construction. It is not to be construed as a guarantee of performance. Any discrepancy shall be reported to the Architect for clarification prior to the commencement of any work.