

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held via Microsoft Teams

WEDNESDAY 14 APRIL 2021



Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 14 April 2021
in the via Microsoft Teams
Commencing at**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 24 MARCH 2021

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 24 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	DA2020/1501 - 38 UNDERCLIFF ROAD FRESHWATER - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SECONDARY DWELLING AND SWIMMING POOL
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2021/248510
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, **refuses** Development Consent to DA2020/1501 for demolition works and construction of a dwelling house including secondary dwelling and swimming pool on land at Lot 22 DP 5118, 38 Undercliff Road, Freshwater, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1501
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 22 DP 5118, 38 Undercliff Road FRESHWATER NSW 2096
Proposed Development:	Demolition works and construction of a dwelling house including secondary dwelling and 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:	Gregory Craig Cetinich Marcella Cetinich
Applicant:	Elisa Testa
Application Lodged:	24/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	04/12/2020 to 18/12/2020
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,048,286.00

EXECUTIVE SUMMARY

Council is in receipt of development application DA2020/1501 seeking consent for construction of a dwelling house and secondary dwelling at 38 Undercliff Road, Freshwater.

The site is zoned R2 Low Density Residential under the provisions of Warringah Local Environmental Plan 2011 (WLEP 2011) and the proposed development is permissible with consent.

The notification of the application resulted in three (3) submissions from neighbouring properties, raising concerns with regard to bulk and scale, traffic and safety and the suitability of the proposed

secondary dwelling. The applicant was provided an opportunity to address these concerns and other concerns raised by Council, and amended plans were presented to Council.

The impact associated with the non-compliant built form of the secondary dwelling is unreasonable and the objectives of the relevant objectives of the controls are not achieved. Further, the outdoor living does not achieve adequate privacy and the proposal is inconsistent with the underlying objectives of Clause D8 (Privacy) of the Warringah DCP.

As such, the application is recommended for refusal.

As the cost of works exceeds \$1 million, and 3 submissions were received, the application is referred to the the Development Determination Panel for determination.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks approval for demolition works and construction of a two storey dwelling house and secondary dwelling pursuant to Warringah Local Environmental Plan 2011 and *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

Specifically, the works incorporate the following:

- Two storey dwelling house;
- Secondary dwelling;
- Double garage;
- Swimming pool and spa;
- Outdoor living including pergola;
- Associated landscaping; and
- Demolition works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 5.4 Controls relating to miscellaneous permissible uses
 Warringah Development Control Plan - B1 Wall Heights
 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 - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 22 DP 5118 , 38 Undercliff Road FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north- east side of Undercliff Road.</p> <p>The site is regular in shape with a frontage of 15.825m along Undercliff Street and 15.45m along Moore Lane. The site has an average depth of 37.5m and a surveyed area of 576.7m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site slopes from south-west to north-east and includes a crossfall of approximately 5m.</p> <p>The site does not include any significant landscape features or vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one, two and three storey dwelling houses and multi dwelling housing.</p>

Map:



SITE HISTORY

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

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

CURRENT APPLICATION

On 15 January 2021, correspondence was sent to the applicant to identify concerns with regard to:

- Built form non-compliance;
- Landscaped Open space;
- Secondary dwelling.

On 8 February 2021, amended plans were presented to Council to address concerns raised.

On 20 March 2021, the application was further amended to further reduce the size of the outdoor living area and amend the design of the secondary dwelling incorporating landscaping and decking.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of

Section 4.15 Matters for Consideration'	Comments
instrument	Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 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. If approved, this matter will be 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>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended development plans.</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. 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 Warringah 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</p>

Section 4.15 Matters for Consideration'	Comments
	proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable 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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the WDCP 2011 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 04/12/2020 to 18/12/2020 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 process council is in receipt of 3 submission/s from:

Name:	Address:
Mrs Glennis Lesley Brothers	36 A Undercliff Road FRESHWATER NSW 2096
Margo Vance	36 B Undercliff Road FRESHWATER NSW 2096
Mrs Marie Olive Howison Mr Paul Douglas Howison	13 Moore Road FRESHWATER NSW 2096

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

- **Suitability of proposed secondary dwelling.**
- **Bulk and scale.**
- **Traffic and safety.**
- **Stormwater.**
- **Site coverage.**

The matters raised within the submissions are addressed as follows:

- **Suitability of proposed secondary dwelling.**

Comment:

Concern is raised in regards to the permissibility and suitability of the proposed secondary dwelling.

The application seeks consent for construction of a secondary dwelling pursuant to *State Environmental Planning Policy (Affordable Rental Housing) 2009*. The proposed development is consistent with the provisions of SEPP (Affordable Rental Housing) 2009 Part 2 Division 2 relating to secondary dwellings. Notwithstanding this Council is not satisfied that the secondary dwelling is consistent with the setback controls under Part B5 (Side boundary setbacks) and B7 (Front boundary setbacks) of the Warringah DCP. Therefore the proposed secondary dwelling as currently designed is not supported.

Accordingly, this matter is included as a reason for refusal.

- **Bulk and scale.**

Comment:

This matter is discussed in detail under Part D9 Building Bulk section of this report. In summary, the proposed secondary dwelling does not incorporate design solutions to minimise the bulk and scale of the development. This is a direct result of the front and side setback non-compliance.

Accordingly, this matter is included as a reason for refusal.

- **Traffic and safety.**

Comment:

Concern is raised in regards to traffic, safety and parking as a result of the proposed development. The development proposes adequate off street parking, being two (2) off-street parking spaces for the primary dwelling. The driveway proposed is to be utilised for off-street parking, and is not considered to be onerous or unreasonable. The resultant loss of street parking that will result from the proposed driveway is not unreasonable in this residential setting. In regards to access, the application has been reviewed by Council's Development Engineers, with no concerns raised, subject to recommended conditions of consent. The proposed development is consistent with the underlying requirements and objectives of Part C2 (Traffic, Access and Safety) and C3 (Parking Facilities).

- **Stormwater**

Comment:

The application was referred to Council's Development Engineers for comment in regards to stormwater management. Suitable conditions to ensure adequate stormwater management for the two dwellings and adjoining properties were recommended and may be incorporated into conditions of consent if this application is to be approved.

- **Site coverage**

Comment:

Concern has been raised in regards to the site coverage of the application, the objection notes the application is non-compliant with the site coverage requirement for the site. The site coverage control under part B4 of the Warringah DCP does not apply to the site, therefore this control is not applicable in this instance.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i></p>
Landscape Officer	<p>The Arborist's Report and Landscape Plans submitted with the application are noted.</p> <p>The Arborist's report indicates one small Frangipani tree to be removed (Z1 rating). Other trees adjoining the site are to be retained and protected.</p> <p>The Landscape Plan indicates replanting across the site in a range of terraces/planters. No assessment is made of compliance with Landscaped Open Space requirements, however no objections are raised to the landscaping proposed.</p> <p>If the proposal is to be approved, conditions have been included as below.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
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 (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling."*

Comment:

The proposed use is defined under WLEP 2011 as R2 Low Density Residential.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. The site is located within the R2 Low Density Residential and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 21: Development to which this Division applies

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

Clause 22: Development may be carried out with consent

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

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The proposal would result in one principal dwelling and one secondary dwelling on the site. The proposed secondary dwelling is detached from the existing principal dwelling.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	The site is not subject to a floor space ratio control. The proposed secondary dwelling has a gross floor area of 39sqm, which satisfies the requirements of the SEPP and WLEP 2011.
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres. (b) parking if no additional parking is to be provided on the site.	The application is not being refused on either of the grounds specified within subclause (4).

Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any	Consistent. This application does not propose any subdivision

subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	of the existing allotment.
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Conclusion

The proposed secondary dwelling demonstrates consistency with the requirements of this SEPP.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1154466M dated 13 November 2020).

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

Commitment	Required Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	50	63

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The 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 development is located partially within the coastal environment area. The development will not result in any adverse impact on the items within (1)(a)-(g).

- (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 proposed development is not likely to adversely impact the environmental and cultural values of the 'Coastal Environment Area'.

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

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

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	% Variation	Complies
Height of Buildings:	8.5m	8.2m (Dwelling house) 5.3m (Pergola) 2.9m (Garage)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

The proposed GFA of the secondary dwelling is less than 60sqm, being 39sqm. The development is compliant with this clause.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.7m	6.9%	No
B3 Side Boundary Envelope	5m - South	Non - compliant Height - 0m - 1.1m Length - 4.7m	22%	No
	5m - North	compliant	-	Yes
B5 Side Boundary Setbacks	0.9m - South	0.9m (Dwelling house, Garage)	-	Yes
	0.9m - North	0m (Secondary)	100%	No

		dwelling) 0.9m (Dwelling house)	-	Yes
B7 Front Boundary Setbacks	6.5m (Primary frontage)	4.5m - 8.5m (Dwelling)	30.8%	No
	3.5m (Secondary frontage)	0m (Garage) 0m - 1.5m (Secondary dwelling)	100% 58% - 100%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (230.68sqm)	28.1% (162sqm)	29.75%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
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	No
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Clause B1 of the WDCP 2011 stipulates that walls are not to exceed 7.2m from the existing ground level to the underside of the ceiling on the uppermost floor.

The proposed principal dwelling would result in a maximum wall height of 8.14m above the existing ground level, non-compliant with the numeric control. This represents a 6.9% variation to the numeric control. The proposed secondary dwelling is consistent with the numeric requirement for this control.

Merit consideration:

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

- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The development is located within the permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwellings along Undercliff Road. The proposed development integrates staggered wall planes and a suitable front setback to reduce apparent building mass. The development responds appropriately to the constraints of the site, and is sufficiently minimised when viewed from public open space and adjoining properties.

- To ensure development is generally beneath the existing tree canopy level*

Comment:

There are no significant native trees located on the subject site or on adjoining properties.

- To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The proposed development will not give rise to unreasonable view loss from adjoining properties and public open space.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

Amenity aspects of this development relating to the dwelling house including solar access, privacy and views loss of this development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces. Solar access, privacy and view loss are addressed separately within this report.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed development does not propose significant excavation on the subject site. The level of excavation is minor and will not have a detrimental or unreasonable impact on adjoining properties.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposed roof pitch and design is compatible with the variety of room forms within the locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

Clause B3 of the WDCP 2011 stipulates that buildings are to be projected at 45 degrees from 5m above the existing ground level, measured from the side boundaries. The principal dwelling encroaches into the prescribed building envelope along the southern elevation at a height ranging between 0m - 1.1m for a length of 4.7m. This represents a 22% variation to the numeric control. The proposed secondary dwelling complies with this clause.

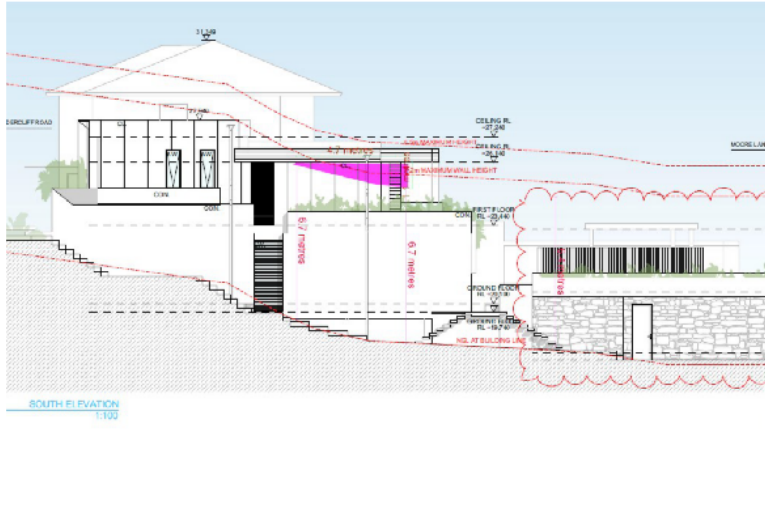


Image 1 - Southern elevation envelope non-compliance

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 non-compliance is not to an extent that will result in a development that is out of character for the area or is visually dominant by virtue of its height and bulk. Furthermore, the flat roof form adopted will minimise the overall height and bulk of the development. The scale of the overall development is consistent with the general pattern of development within the street.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The dwelling house has been designed in a manner that does not unreasonably nor detrimentally overshadow nor overlook adjoining and nearby properties. Adequate spatial separation is proposed between buildings. The development satisfies this objective.

- *To ensure that development responds to the topography of the site.*

Comment:

The development appropriately responds to the topography of the site and is designed to minimise the overall bulk and scale of the development and resulting amenity impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B5 Side Boundary Setbacks

Description of non-compliance

Part B5 of the Warringah DCP requires development be setback from side boundaries at least 0.9m. The proposed secondary dwelling has a nil setback, non-compliant with the numeric control. This represents a 100% variation to the numeric control.

It is accepted that the prescribed side setbacks has not been enforced along other parts of the Moore Lane for recently approved parking structures. However, in order to support a lesser setback, the proposed development must be designed to minimise impacts upon adjoining properties and achieve consistency with the objectives of the side setback control.

In this respect, the proposed variation cannot be supported, as the proposal is inconsistent with the objectives of this control, as follows.

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:

The proposal provides limited deep soil landscaped areas along the side setbacks. The incorporation of more meaningful deep soil areas along the side boundaries would be extremely beneficial in such circumstances where reduced setbacks are proposed.

- *To ensure that development does not become visually dominant.*

Comment:

The secondary dwelling dominates the northern side setback, and with no spatial side setbacks established. This proposed outcome shows no attempt to minimise the visual dominance resulting in a building alignment and proportion that is inconsistent with the surrounding area of Moore Lane. The proposed development will be overwhelming as seen from adjoining dwellings and the street. The visual dominance of the non-compliant proposal is amplified by the lack of articulation from the side and front (secondary) boundaries.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

As discussed above, the dominance of the secondary dwelling is of a direct results of the lack of separation between the subject site and adjoining Northern property. The dwelling does not sufficiently minimise the scale and bulk of the proposal.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

Compliance with the side setback control would allow for reasonable level of impact upon the amenity of neighbouring properties. However, the proposal as currently proposed fails to ensure adequate privacy due to the lack of physical separation between the subject site and adjoining northern property.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The development was found to have no unreasonable impact upon district or water views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B7 Front Boundary SetbacksDescription of non-compliance

The Warringah DCP 2011 requires a 6.5m setback to the frontage and a 3.5m setback to the secondary frontage.

The proposed dwelling house is setback 4.5m - 8.5m from the primary frontage (Undercliff Road), non-compliant with the numeric control. This represents a 30.8% variation to the numeric control.

The proposed garage and secondary dwelling has a nil -1.5m setback from the secondary frontage (Moore Lane), non-complaint with the numeric control. This represents a 58% - 100% variation to the numeric control.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

Flexibility is warranted in consideration of the nil setback to the proposed garage along Moore Lane. However, the nil -1.5m setback between Moore Lane and the proposed secondary dwelling does not create a sufficient sense of openness to minimise the visual impact of the built form.

Recent exceptions to the front setback control within Moore Lane, have been provided to allow for adequate off-street parking on smaller sites within the Lane (No. 50 Undercliff Road). The secondary dwelling proposed to the Moore Lane frontage is excessive and fails to demonstrate compliance with this control. It is therefore considered that at a minimum, to maintain the visual continuity and pattern of buildings the minimum setback for a secondary dwelling on this site

should comply with the 3.5m as per the requirements of this control. The boundary to boundary setback proposed limit the ability for landscape elements to be incorporated into the design of buildings. The landscape elements proposed are not considered suitable in this instance. In this regard, a secondary street setback of 0m-1.5m for the secondary dwelling is not considered appropriate, especially for a development of this size and scale.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

As discussed in detail throughout this report the proposed development will result in unreasonable building bulk and visual impact when viewed from adjoining properties and the public domain. The inability of the proposal to effectively minimise the visual impact on the Moore Lane streetscape and public domain renders the proposal an over-development of the site and is neither appropriate or reasonable. This is further evidenced by the non-compliances proposed to the side setback controls under the WDCP 2011. The secondary frontage setbacks of the proposed development are not consistent or compatible with surrounding and nearby development, noting there are no recent secondary dwellings are approved in this Lane. In this context, the proposed secondary dwelling results in a significant departure from the established pattern of buildings and landscape elements in the vicinity and therefore does not meet this objective.

The proposed minor front setback non-compliance to Undercliff Road is supported.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposal does not incorporate design solutions to minimise the bulk and scale of the development and the impact on the streetscape. The proposal seeks to benefit from existing examples of non-compliances within the street. This design solution is not considered to be an appropriate response to the sites location and siting relative to adjoining public and private properties. The front setback will have a significant bearing on the overall height and bulk of the development, such that it will have an unreasonable impact upon the amenity of adjoining properties and streetscape.

- *To achieve reasonable view sharing.*

Comment:

The non-compliance will not result in any unreasonable loss of views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Clause D1 of the WDCP 2011 stipulates that development is to provide at least 40% (230.68sqm) of the

site area as landscaped open space. In calculating landscaped open space landscaped areas with dimensions less than 2m are excluded from the calculation. The application proposes 28.1% (162sqm) of the site area as landscaped open space, non-compliant with the numeric control. This represents a 29.75% variation to the numeric control.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposed secondary street frontage provides inadequate landscaped area to accommodate planting. The extent of this landscaping is not sufficient for the presentation of the development to Moore Lane. In particular, the siting of the secondary dwelling and decking restricts potential for an adequate integration of planting at Moore Lane.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

At present the site is not considered to have any highly valued vegetation that provides irreplaceable habitat for wildlife. The site does not have any substantial features such as rock outcrops and habitats for wildlife, nor does it propose to remove any indigenous vegetation

- *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 areas of landscaped open space do not have sufficient dimensions so as to allow for the establishment of natural features that could adequately mitigate the height, bulk and scale of the development. In particular, the small section of landscaping at the eastern side of the site does not provide large enough area of spacing or landscaping to reduce the presentation of bulk at Moore Lane. The bulk and scale of the secondary dwelling and general outdoor living area limit the potential for significant landscaped open space on site.

- *To enhance privacy between buildings.*

Comment:

The shortfall in landscaped open space limits the potential to enhance privacy between properties. Compliance with the front and side setback controls for the secondary dwelling and the reduction of size of the outdoor living area will allow for greater areas of deep soil across this part of the site and will enhance privacy between the subject site and adjoining properties. Furthermore, where landscaping is proposed along boundaries, it either has insufficient maturity height to provide any privacy benefit or its growth is constricted by size of planter boxes and retaining walls, and as such cannot be relied upon.

- *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 occupants.

- *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:

Council's Stormwater Engineer has provided the proposed is acceptable.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D8 Privacy

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposal involves a elevated deck to the western side of the property. Given the topography of the site and the siting of the adjoining Neighbour to the north and south (No. 46 and 36 Undercliff Road), this would result in the proposed pool and deck being directly adjacent and above the habitable rooms of the neighbouring properties. It is considered that the positioning, extent and orientation of this deck would cause an unreasonable impact on privacy. The non-compliance with the control side and front (secondary) setback controls and the design of the deck results in an unacceptable outcome for privacy. In particular, the size of this private open space above ground level (when combined with the minimal setbacks) with an orientation directly toward the neighbouring property will result in acoustical and visual privacy issues in terms of the relationship between living areas and private open space.

As such, the proposal does not meet this objective.

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

Comment:

The proposed balcony and elevated pool proposes a 1.8m tall privacy screening in order to mitigate direct overlooking to the neighbouring properties to the north and south. It is considered that this privacy screening would accentuate the bulk of the proposal and ultimately compromise access to light and outlook for this adjoining neighbour.

- *To provide personal and property security for occupants and visitors.*

Comment:

The development provides for the personal and property security for occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D9 Building Bulk

Description of Non-compliance

The Warringah DCP 2011 requires the following:

"3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:

The amount of fill is not to exceed one metre in depth.

Fill is not to spread beyond the footprint of the building.

Excavation of the landform is to be minimised.

4. Building height and scale needs to relate to topography and site conditions.

5. Orientate development to address the street."

The development includes extensive excavation of the land to ensure the proposed secondary dwelling is incorporated into the proposal. The secondary dwelling does not step down the slope. Further, the proposed development fails to orientate the secondary dwelling to the address the secondary street frontage.

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The planning outcome is not site responsive in that the proposed secondary dwelling is inconsistent with the front and side setback controls and landscaped open space built form controls of WDCP 2011. The site does not respond to the natural constraints of the site (such as slope). The substantial scale of these non-compliances, will have a significant impact on the overall height and bulk of the secondary dwelling and will have caused unreasonable amenity

impacts including loss of privacy for the adjoining southern and northern properties.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

While the design of the primary dwelling is generally of a suitable bulk and scale, the design of the proposed secondary dwelling is not considered to be an appropriate response to the sites location and siting relative to adjoining properties and secondary street frontage, in that nil front and northern side setbacks will have a unreasonable bearing on the overall height and bulk of the development, such that it will have an unreasonable amenity impact upon the streetscape and adjoining properties.

Therefore, the proposed secondary dwelling will appear overbearing and visually dominant and the design does not provide sufficient articulation.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$10,483 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,048,286.

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, 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
- Consistent with the zone objectives of the LEP
- Consistent 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

Conclusion

The proposed secondary dwelling is inconsistent with the front and side setback as well as the landscape open space controls of the WDCP 2011. The non-compliant elements of the proposal attribute to a unreasonable privacy and visual impact to the streetscape and results in a unsatisfactory level of bulk and scale for this residential area.

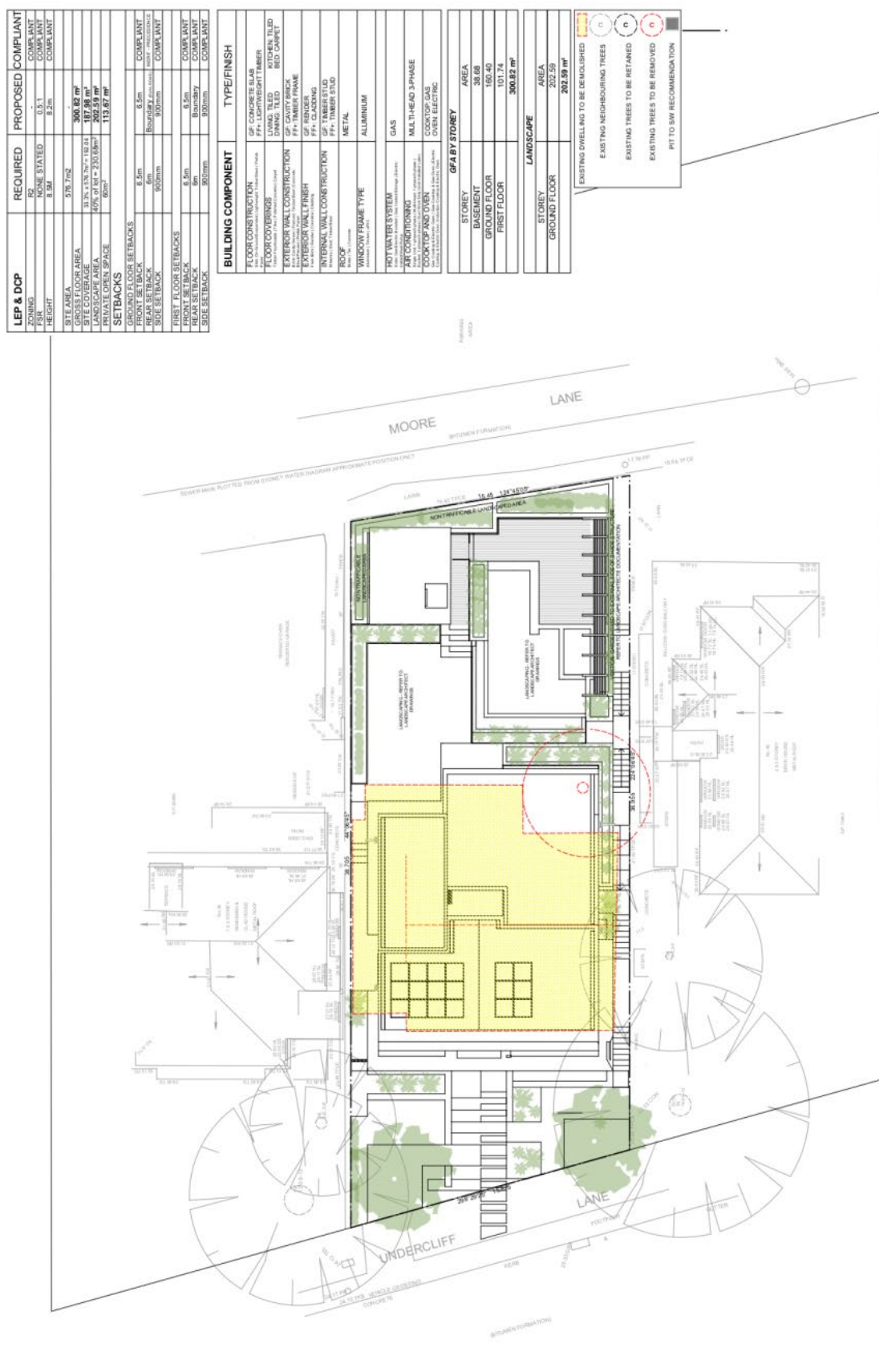
The impacts associated with the non-compliant secondary dwelling and privacy impacts are considered to warrant the refusal of the Development Application.

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 DA2020/1501 for the Demolition works and construction of a dwelling house including secondary dwelling and swimming pool on land at Lot 22 DP 5118,38 Undercliff Road, FRESHWATER, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5 Side Boundary Setbacks of the Warringah Development Control Plan.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8 Privacy of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.



DEVELOPMENT APPLICATION

Client	GC & MC
Drawing	SITE PLAN
Project description	NEW DWELLING HOUSE
Project address	38 UNDERCLIFF ROAD
Sheet no.	DA02
Job no.	2015DA

Journal	Date	Issue	Description
Journal	12/11/20	DA01	DEVELOPMENT APPLICATION ISSUE
	10/02/2021	DA01	(ISSUE B - RP)



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STREETSCAPE PERSPECTIVE

ARKHAUS

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the orders to be completed in accordance with the National Construction Code, Australian Standards and relevant by laws. All proprietary items are to be installed in accordance with manufacturers' details and instructions. Suitable authority approvals and specifications for the non-combustible materials are to be obtained prior to installation. Where applicable, the use of non-combustible materials is to be taken into account in the design of the structure. These drawings have been prepared by JAL/KMA and in the property of the above-named party. These drawings are not to be used in any way without the prior written permission of JAL/KMA and any liability for errors or omissions is accepted by JAL/KMA.

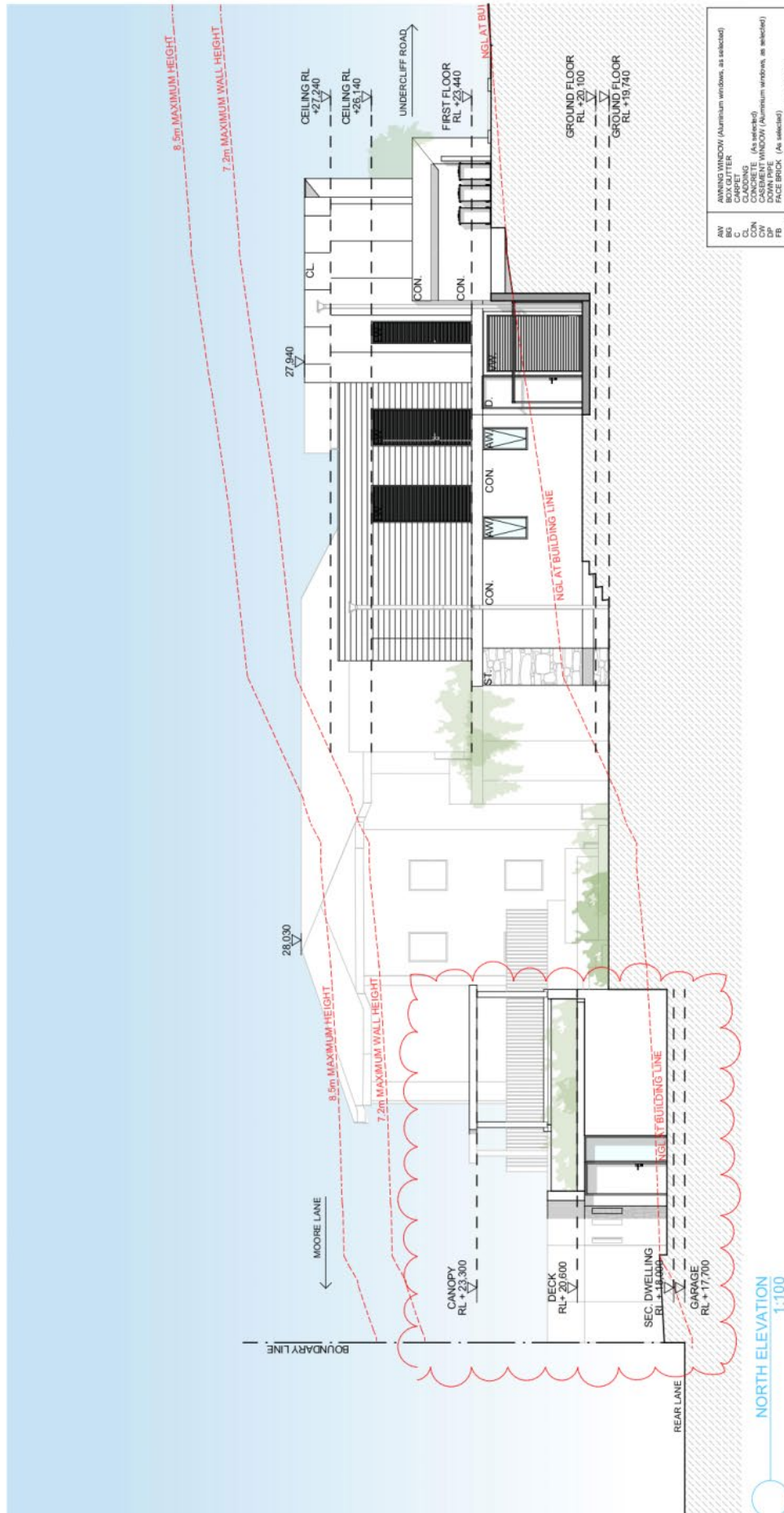
Date: _____

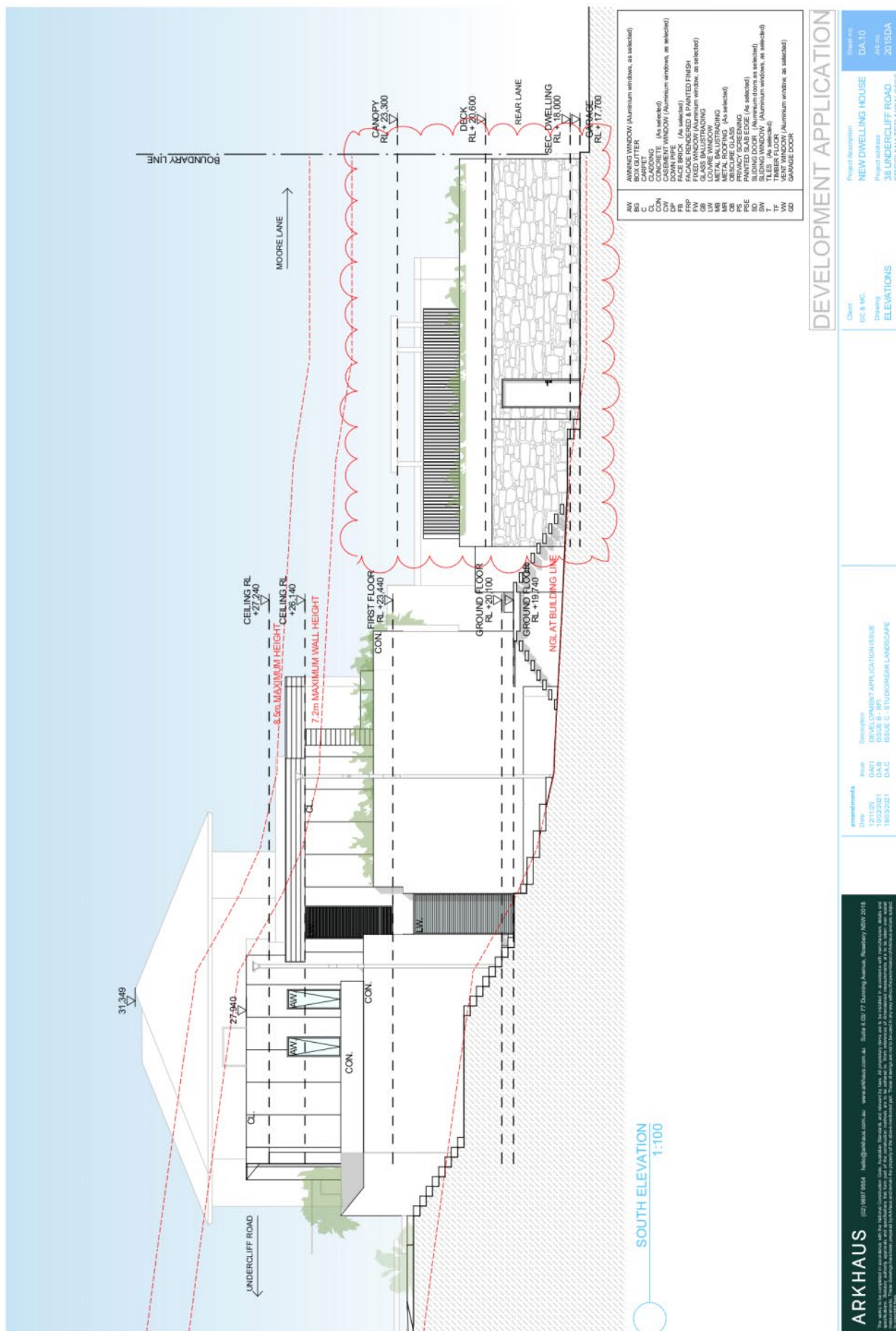
Description	DEVELOPMENT APPLICATION ISSUE

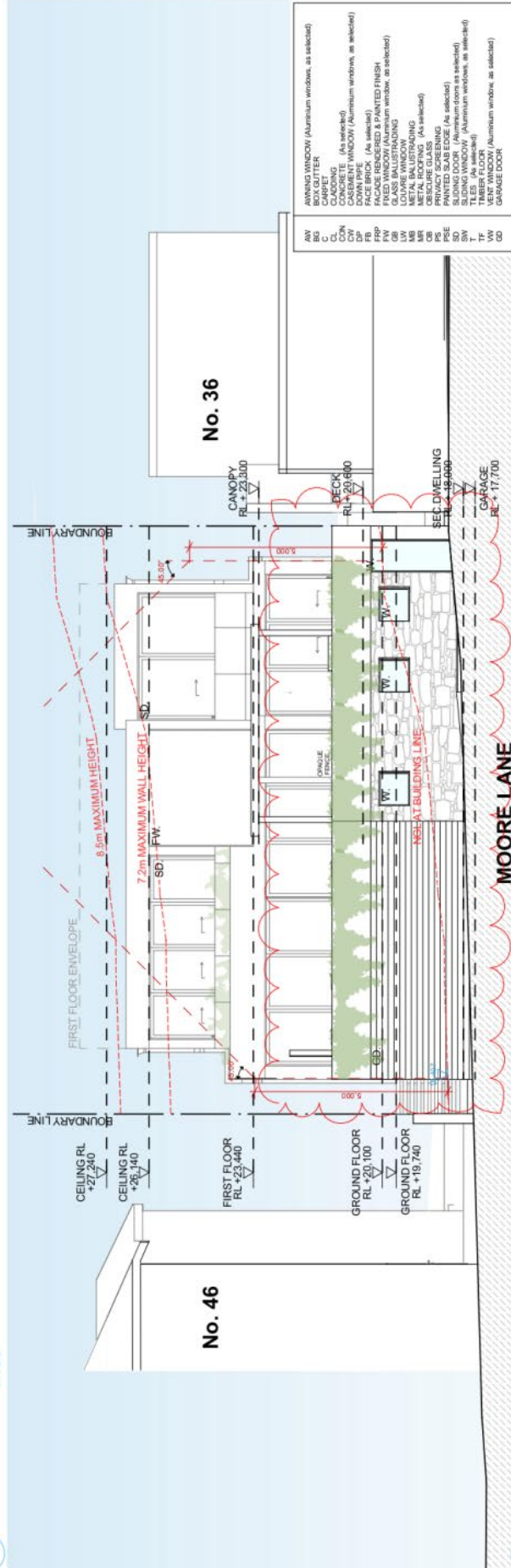
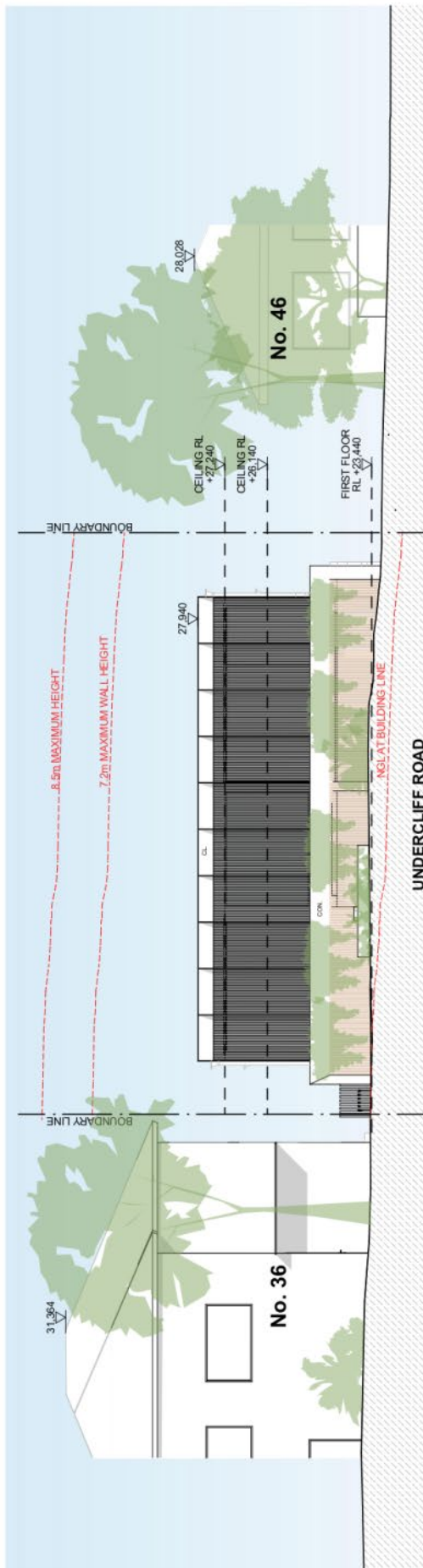
Client
GC & MC
Drawing
STREETSCAPE

Project description	NEW DWELLING HOUSE
Project address	38 UNDERCLIFF ROAD FRESHWATER NSW 2086
Sheet no.	DA-08
Job no.	2015DA

DEVELOPMENT APPLICATION







DEVELOPMENT APPLICATION			
ARKHAUS <small>The works to be completed in accordance with the relevant Council's Code of Practice and all relevant legislation. All proposed works are to be located in accordance with the relevant Council's Code of Practice and all relevant legislation. These drawings are to be used for the purpose of the development application only and are not to be used for any other purpose without the written consent of Arkhaus.</small>	Client GC & MC Drawing ELEVATIONS	Project description NEW DWELLING HOUSE Project address 38 UNDERCLIFF ROAD FRESHWATER NSW 2056	Sheet no. DA11 Job no. 2015DA

ITEM 3.2	DA2020/1477 - 53 CASTLE CIRCUIT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2021/247755
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 DA2020/1477 for Alterations and additions to a dwelling house on land at Lot 17 DP 200638, 53 Castle Circuit, Seaforth, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1477
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 17 DP 200638, 53 Castle Circuit SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	David Mark Dix Deborah Myrtle Barr
Applicant:	Deborah Myrtle Barr
Application Lodged:	03/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/12/2020 to 14/01/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 14.1% 4.4 Floor space ratio: 20%
Recommendation:	Approval
Estimated Cost of Works:	\$ 501,264.00

The proposal is for alterations and additions to the existing dwelling. The primary addition is a new upper level, along with other alterations on the existing lower levels. Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site.

The proposal does not comply with the height of buildings and floor space ratio development standards in the MLEP. Nor does it comply with the wall height and storey height controls in the MDCP. However, these non-compliances do not result in any unreasonable impacts to the surrounding area, including with regard to views. Due to the topography and existing configuration of development on site, the proposal will generally present as two storeys viewed from the public domain and from the surrounding properties, and will be generally consistent with the height and scale of existing development in the area.

One submission was received which was in general support of the application, subject to consideration of future possible development. This issue has been considered and not found to result in the need to require amendments to the plans.

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

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

PROPOSED DEVELOPMENT IN DETAIL

Alterations and additions are proposed to the existing two storey dwelling, with works on both levels, and the addition of a new upper level.

Ground Floor Plan (lower level):

The existing lower level will be altered to provide for a larger bedroom and family room, which is to be created over part of the existing balcony. The existing balcony will be provided with new decking and extended. A new stair will be provided from the existing balcony to access the rear of the site. The laundry is also proposed to be extended with a deck adjacent. Internal alterations are also proposed to provide for upgrades of bathrooms etc.

First Floor Plan (entry level):

A new roof is provided over the existing entry area and internal alterations proposed to provide for an internal stair to access the new upper level. The existing bathroom on this level is required to be reconfigured to provide for the internal stair.

Second Floor Plan (new upper level):

A new upper level is proposed, comprised of a master bedroom with ensuite and robe, and 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 - 4.6 Exceptions to development standards
 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 - 4.1.3 Floor Space Ratio (FSR)

SITE DESCRIPTION

Property Description:	Lot 17 DP 200638 , 53 Castle Circuit SEAFORTH NSW 2092
Detailed Site Description:	<p>The site is identified as Lot 17 in DP 200638 which is known as No. 53 Castle Circuit, Seaforth. The site is an irregular shaped allotment which is bounded by Castle Circuit to the east, south and west. The site has an area of 588.1m² with a depth of approximately 27.92m and a varied width.</p> <p>The property has a steep slope generally from east to west with levels of RL62.49 at the northeast corner down to RL51.19 towards the northwest corner. The site is burdened by an easement for drainage and a right of carriageway adjacent to the western boundary. The site currently accommodates a one and two storey clad and brick dwelling with tiled and metal roofing. The dwelling is located towards the northeast portion of the site and orientated towards the eastern boundary fronting Castle Circuit. A swimming pool is located on the southern side of the dwelling.</p> <p>The existing surrounding development comprises predominantly multi storey dwellings designed and orientated to maximise views of Middle Harbour on a variety of allotment sizes.</p>

Map:



SITE HISTORY

PLM2020/0244 - The applicants held a prelodgement meeting with Council on 29 October 2020. The notes from this meeting state: *"The support of the development is contingent upon the reduction of the floor area to Level 2 to improve the level of non-compliance to the building height and floor space ratio) and its impact upon view sharing from surrounding residential properties (which is to be analysed by a View Sharing Analysis)."*

The plans provided with the application have reduced the floor space of Level 2 to reduce FSR and height, and a view loss analysis has also been provided from identified surrounding properties. These properties were all notified of the application, and no submissions were received in response.

DA5066/91 - Council granted approval on 25 November 1991 for a swimming pool, decks, fencing and landscaping.

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 Matters for Consideration'	Comments
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)(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 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 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> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 22 September 2020). The report stated that the bushfire attack level of the site is BAL 29, and recommended alternative solutions to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/12/2020 to 14/01/2021 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 1 submission/s from:

Name:	Address:
Mr Daniel John Chesson	51 Castle Circuit SEAFORTH NSW 2092

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

- Future development

The matters raised within the submissions are addressed as follows:

- **Future development**

The one submission received was from the adjacent neighbour to the north. The submission stated general support of the proposal, but stated that they intended to lodge a development application of their own in the future, that would likely disrupt views to the north from the proposed northern balcony off the new upper level bedroom proposed for the subject site. The submission wished to have this intention noted and considered.

Comment:

The issue is noted. It is considered that this is an issue to be dealt with in the future if and when a development application is proposed on the neighbouring property. The owner of 53 Castle Circuit indicated verbally they had seen the submission and did not foresee any issues. Beyond that, the proposed upper level northern balcony is a bedroom balcony, which if impacted would be across the northern side boundary, and would still retain wide uninterrupted views to the west. The issue is noted, but not considered to be an issue that should result in amendment of the current plans.

REFERRALS

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.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The application was referred to the NSW RFS, who responded with conditions of consent. These conditions will be included in the consent if the application is approved.

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. A383538). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.7m	14.1%	No
Floor Space Ratio	FSR: 0.4:1	283m ² FSR: 0.48:1	20%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.7m
Percentage variation to requirement:	14.1%

Development standard:	Floor space ratio
Requirement:	0.4:1m
Proposed:	0.48:1m (283sqm)
Percentage variation to requirement:	20%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and 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:

The Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standards are 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 standards.

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:

Height of Buildings:

- Compliance with the height control is constrained by the siting of the building and sloping topography of the site. The site has a slope towards the rear with a total fall of approximately 11m with a site depth of only 29m. This significant change in levels constrains the site.
- The additions are located at the front of the existing dwelling to limit the noncompliance with the height controls, with only a very small encroachment of the height controls at the rear portion.
- The proposal is constrained by the location and height of the existing dwelling on site and any additions are constrained by the level established by the dwelling. The development does not result in a significant bulk when viewed from either the street or the neighbouring properties.
- The site is further constrained by an access driveway on the western portion which limits any development on that portion of the site. Therefore there is no opportunity for additions to the rear of the dwelling. Further locating development at the rear of the existing dwelling to comply with the height controls would have greater impacts on views from the adjoining properties and potentially the public domain.
- The site is constrained by bushfire and extending the dwelling further to the west increases the fire hazard.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposal ensures adequate view sharing.
- The site is significantly constrained by slope, existing dwelling placement, existing vehicular

access and bushfire. Therefore the proposal which provides for an addition with a minor encroachment of the height controls is considered justified and provides for a better environmental outcome than if strict compliance with the development standard was applied.

Floor Space Ratio:

- The development does not result in a significant bulk when viewed from either the street or the neighbouring properties.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposal ensures adequate view sharing.
- The subject site is an undersized allotment. Clause 4.1.3.1 of the Manly DCP provides for exceptions to the FSR for undersized allotments as follows:

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 environmental planning grounds to justify contravening the development standard' under LEP clause 4.6(3).

The maximum variation to FSR on undersized lots is 'Calculation of FSR based on 750 sqm lot size/ site area'. In this regard, the proposed gross floor area of 285m² based on a site area of 750m² would equate to a FSR 0.38:1.

Comment:

The reasoning above is generally concurred with. The difficult topography, existing development and other site constraints discussed above, lack of any significant environmental impacts caused by the non-compliance, combined by general achievement of the relevant objectives, presents sufficient environmental planning grounds for the proposed non-compliances with both the height and FSR development standards. Clause 4.1.3.1 of the Manly DCP presents another environmental planning ground for the departure from the FSR development standard, and the general overall bulk and height of the building will be generally commensurate with other existing development in the vicinity.

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 and Floor Space Ratio development standards and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposal will be generally consistent with the height and scale of existing development in the vicinity. Due in large part to the topography, the proposal will appear generally as two storeys in height from the east, where most visible from the public road, and will be commensurate in height and scale with buildings to the north when viewed from the west. The proposal is considered to achieve the objective in this regard.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale proposed is consistent with that envisioned for the site by Clause 4.1.3.1 of the Manly DCP, which allows for variations to the FSR development standard in certain circumstances. Applied in this case, the proposal would easily comply with the FSR requirements for a larger lot. The overall height of the development is generally consistent with surrounding development, and due to the topography will not significantly stand out as being out of place in the area due to the bulk and scale.

c) to minimise disruption to the following:

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

Comment:

No unreasonable view loss has been identified.

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

Comment:

The site is surrounded to the east, south and west by the public road, and the proposal will not have any unreasonable impacts on solar access.

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

Comment:

N/A - the site is in the R2 zone.

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 proposal builds atop the existing dwelling, and is of a bulk and scale generally envisioned by Clause 4.1.3.1 of the Manly DCP, which allows for variations to the FSR in this location. As such, it is considered to be generally in accordance 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,

Comment:

No unreasonable impacts on views from either private or public land have been identified.

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

Comment:

The proposal will be within the existing building footprint on site, and will not cause any inappropriate visual relationships with the surrounding area.

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

Comment:

No adverse environmental impacts have been identified as a result of the proposal, as assessed throughout this report.

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:

N/A

Zone objectives

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

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

Comment:

The proposal will remain a single detached dwelling.

It is considered that the development satisfies this objective.

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

Comment:

The proposal will not prevent other land uses from being carried out in the area.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, 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 and Floor space ratio Development Standards associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site	Requirement	Proposed	%	Complies
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Area: 588.1m ²			Variation*	
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling	1	N/A	Yes
	Dwelling Size: 124sqm	283sqm	N/A	Yes
4.1.2.1 Wall Height	N: 7.1m (based on gradient 1:10)	9.2m	29.6%	No
4.1.2.2 Number of Storeys	2	3	33.3%	No
4.1.2.3 Roof Height	Pitch: maximum 35 degrees	4.6 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	New works within existing footprint, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N 3.1m (based on wall height) Terrace: 2.6m	3.558m - 4.031m Terrace 2.98m	N/A N/A	Yes Yes
	Windows: 3m	3.6m minimum	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	60.1% (356.7sqm)	N/A	Yes
	Open space above ground 25% of total open space	20.3% (72.5sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	37.3% (133.2sqm) Existing and unchanged	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	190sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.3m existing and unchanged	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Existing and unchanged	N/A	Yes
	1m curtilage/1.5m water side/rear setback	Existing and unchanged	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	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 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes

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

Detailed Assessment

3.4.3 Maintenance of Views

The application includes a detailed view loss analysis from neighbouring properties to the east. These properties are located generally well above the subject site topographically, and the view analysis provided demonstrates that no unreasonable view impacts will occur, despite proposed non-compliances with the height of buildings and floor space ratio development standards. Notification of the application included all properties included in the view analysis, and all other properties where it was considered some view impact could occur. No submissions were received in this regard. A site inspection did not reveal any likely unreasonable view loss from the surrounding public and private land, and the proposal is considered acceptable in this regard.

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

Description of non-compliance

Clause 4.1.2 of the MDCP 2013 limits building to 2 storeys in height. The proposal is 3 storeys in height, which does not satisfy this requirement.

Clause 4.1.2 of the MDCP 2013 relies on the slope of the land to determine the maximum external wall height. In calculating the slope of the land, the maximum wall height is as follows:

North Elevation: 7.1m (1:10 gradient).

The wall height along the northern elevation of the proposed first floor addition is 9.2m.

Merit consideration

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

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

Comment:

The proposal will generally appear as a two storey dwelling when viewed from the east of the site, or approaching down Castle Circuit from the north east, or moving up Castle circuit from the south east, due to the slope of the land and the existing lower floor being located below the existing boundary wall and garage / driveway. From the west, the topography of the land, and in particular the height of the site above Castle Circuit, will not make the height of the building readily visible. Further, the development will be generally consistent with the prevailing height of development when viewed from the lower portion of Castle Circuit. The proposal is generally consistent with the objective in this regard.

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

Comment:

The proposal is consistent with the variation for floor space ratio permitted by Clause 4.1.3.1 of the Manly DCP. The height of the proposal, although not compliant with the control, will generally present as two storeys when viewed from the public domain, due to the topography and existing site conditions. As such, it is considered that the overall bulk and scale is generally reasonable in its context.

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

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

Comment:

The proposal will not unreasonably compromise views to and from public and private open space.

(1) (d) To provide solar access to public and private open space and maintain adequate sunlight access

to private open spaces and to habitable rooms of adjoining dwellings.

Comment:

The solar impacts of this aspect of the development are acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces. The site is surrounded to the east, south and west by the public road.

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

Comment:

The subject site is not located within a recreation or environmental protection zone, nor does the site adjoin a recreation or environmental protection zone.

Having regard to the above assessment, it is concluded that the applicable objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

The site falls within area U on the Manly Lot Size map. Clause 4.1.3 of the DCP allows for variations to the FSR development standard under clause 4.4 of the LEP, by calculating on a lot size of up to 750sqm. Applying this to the development results in a proposed FSR of 0.377:1, which is easily compliant with the maximum 0.4:1 requirement under clause 4.4 of the LEP. This DCP clause has been used as part of the environmental planning reasons for a breach to the development standard, as discussed under clause 4.6 of the LEP in this report.

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 \$5,013 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$501,264.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building and 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 DA2020/1477 for Alterations and additions to a dwelling house on land at Lot 17 DP 200638, 53 Castle Circuit, SEAFORTH, 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-03 A	June 2020	L. Mitchell
DA-04 A	June 2020	L. Mitchell
DA-05 A	June 2020	L. Mitchell
DA-06 A	June 2020	L. Mitchell
DA-07 A	June 2020	L. Mitchell
DA-08 A	June 2020	L. Mitchell
DA-09 A	June 2020	L. Mitchell
DA-10 A	June 2020	L. Mitchell
DA-11 A	June 2020	L. Mitchell
DA-12 A	June 2020	L. Mitchell
DA-13 A	June 2020	L. Mitchell
DA-14 A	June 2020	L. Mitchell
DA-15 A	June 2020	L. Mitchell
DA-16 A	June 2020	L. Mitchell
DA-17 A	June 2020	L. Mitchell
DA-18 A	June 2020	L. Mitchell
DA-19 A	June 2020	L. Mitchell
DA-20 A	June 2020	L. Mitchell
DA-21 A	June 2020	L. Mitchell

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation J3096	27 November 2020	White Geotechnical Group
BASIX Certificate A383538	8 November 2020	Leanne Mitchell
Bushfire Assessment Report 210200	22 September 2020	Building Code & Bushfire Hazard Solutions

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

In the event of any inconsistency between conditions of this consent and the

drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **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
NSW Rural Fire Service	Rural Fire Service Referral Response	18 February 2021
Ausgrid	Ausgrid Referral Response DA Letter - Overhead Powerlines_A-18202	Not dated

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

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

3. **Prescribed Conditions**

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$5,012.64 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 \$501,264.00.

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 \$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

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.

8. **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.

9. **Compliance with Standards**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

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

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

11. **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

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.

Note: The following Standards and Codes applied at the time of determination:

(a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage

- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

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

13. **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.



Rev	Description	Date
A	FOR DEVELOPMENT APPLICATION	08/11/20

SITE ANALYSIS	
SITE AREA:	588sqm
EXISTING FLOOR AREA:	235sqm
PROPOSED FLOOR AREA:	265sqm
EXISTING FSR:	0.40:1
PROPOSED FSR:	0.48:1
- 0.4:1 ALLOWABLE	
HEIGHT OF BUILDING:	
- 8.5m ALLOWABLE	
- REFER TO SECTIONS	
LANDSCAPING:	
- NO CHANGE TO SOFT LANDSCAPED AREAS	
REFER TO STATEMENT OF ENVIRONMENTAL EFFECTS FOR FURTHER INFORMATION	

DRAWN BY: L. MITCHELL B ARCH E: leamemitchell.oz@gmail.com M: 04 379 08990	PROJECT Dix-Barr Residence 53 Castle Circuit Seaford NSW 2092	TITLE SITE ANALYSIS PLAN	NOT For Construction			
			NORTH 	JOB No.	20-03	
DATE	JUNE 2020					
			SCALE	A3 @	As indicated	
			DWG No.		DA-02 A	



Rev	Description	Date
A	FOR DEVELOPMENT APPLICATION	20-03

KEY:

- PROPERTY BOUNDARY
- EXISTING BUILDING
- EXISTING SOFT LANDSCAPING
- DEMOLITION
- PROPOSED ALTERATIONS
- PROPOSED NEW WALLS
- STORMWATER
- SEWER

RL RELATIVE LEVEL
FEL FINISHED FLOOR LEVEL
DOW PIPE
RW O RAINWATER OUTLET
GHW INSTANTANEOUS GAS HOT
WATER
A/C AIR CONDITIONING UNIT
EB ELECTRICAL BOARD
SS SEWER STACK
EX EXISTING

BUSHFIRE CONSTRUCTION REQUIREMENTS:
ANY NEW ROOFING AND ALL NEW WORKS FACING NORTH, SOUTH AND WEST SHALL COMPLY WITH AUSTRALIAN STANDARD AS3958-2018 "CONSTRUCTION OF BUILDINGS IN BUSH-FIRE PRONE AREAS" SECTION 7 (BAL 29) AND SECTION 7.5 OF PLANNING FOR BUSHFIRE PROTECTION 2019.

ALL NEW WORKS FACING EAST SHALL COMPLY WITH AUSTRALIAN STANDARD AS3958-2018 "CONSTRUCTION OF BUILDINGS IN BUSH-FIRE PRONE AREAS" SECTIONS 3 & 6 (BAL 19) AND SECTION 7.5 OF PLANNING FOR BUSHFIRE PROTECTION 2019.

REFER TO THE ASSOCIATED BUSHFIRE ASSESSMENT REPORT FOR FURTHER DETAILS - REF #210200, DATED 22/09/2020.

DRAWN BY:
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PROJECT

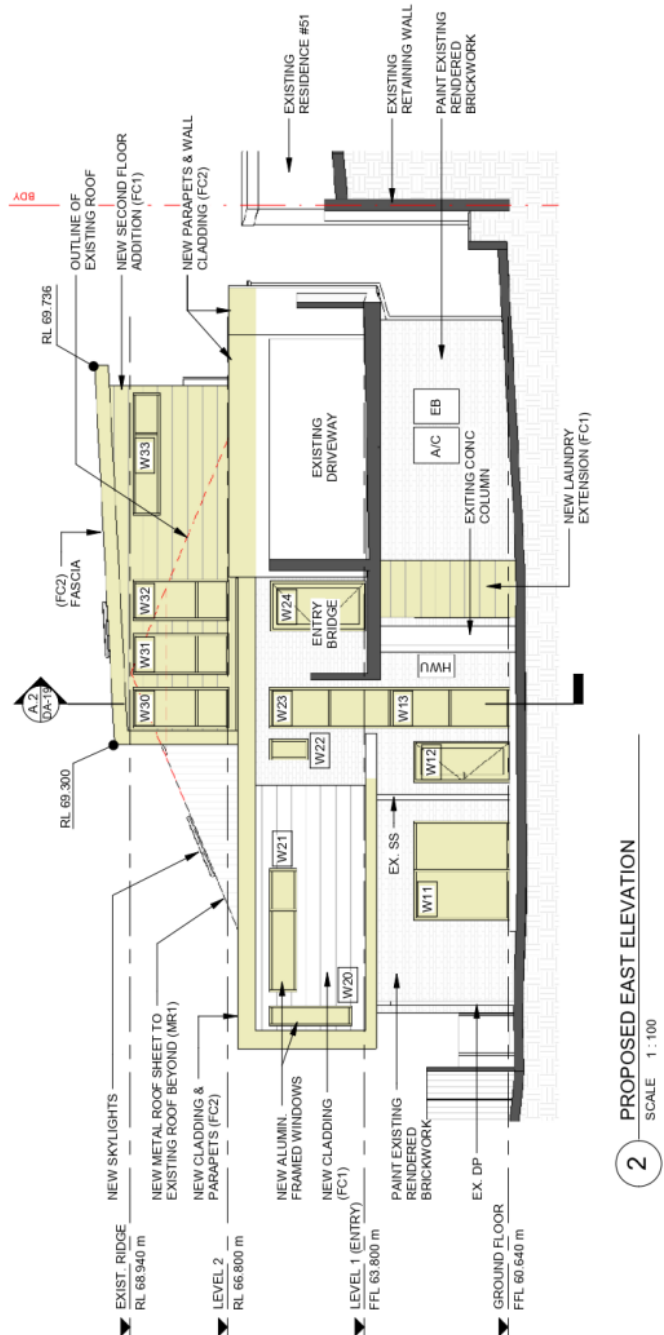
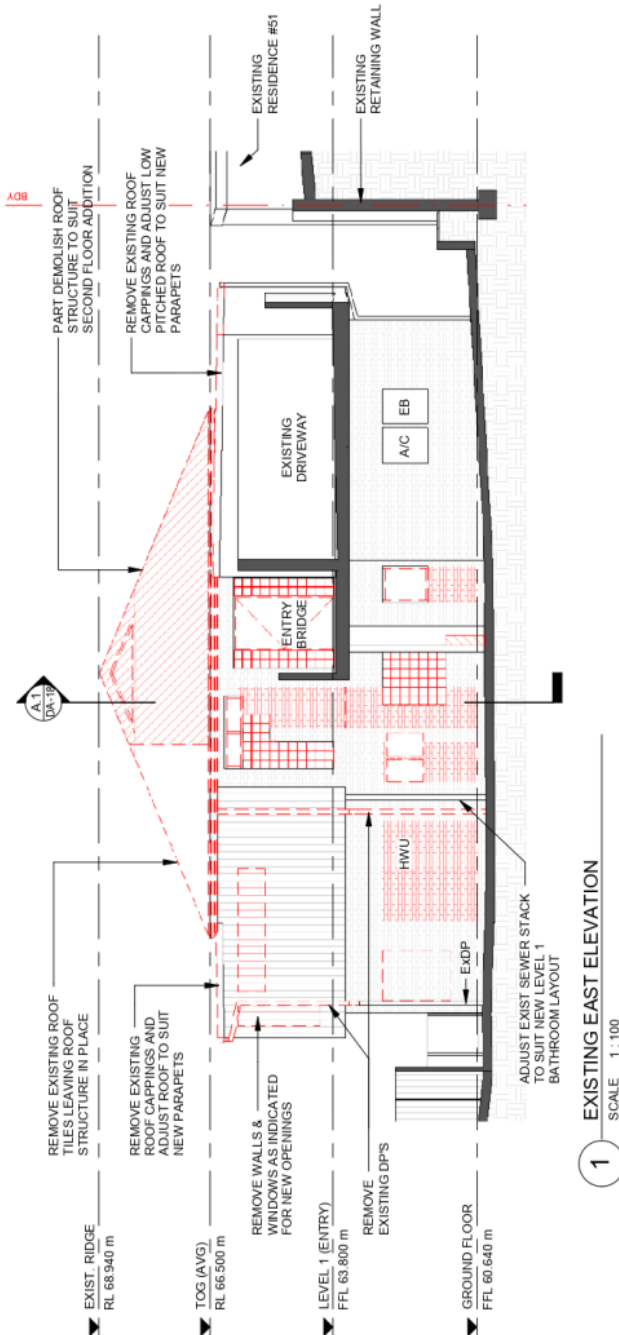
Dix-Barr Residence
53 Castle Circuit
Seaford NSW 2092

TITLE

**EXISTING &
PROPOSED EAST
ELEVATION**

NOT For Construction

NORTH	JOB No.	20-03
	DATE	JUNE 2020
	SCALE	A3 @ 1:100
	DWG No.	DA-13 A



Rev	Description	Date
A	FOR DEVELOPMENT APPLICATION	20-03-2020

KEY:

- PROPERTY BOUNDARY
- EXISTING BUILDING
- EXISTING SOFT LANDSCAPING
- DEMOLITION
- PROPOSED ALTERATIONS
- PROPOSED NEW WALLS
- STORMWATER
- SEWER

RELATIVE LEVEL
FINISHED FLOOR LEVEL
DOWN PIPE
RAINWATER OUTLET
INSTANTANEOUS GAS HOT
WATER HEATER
AIR CONDITIONING UNIT
ELECTRICAL BOARD
SEWER STACK
EXISTING

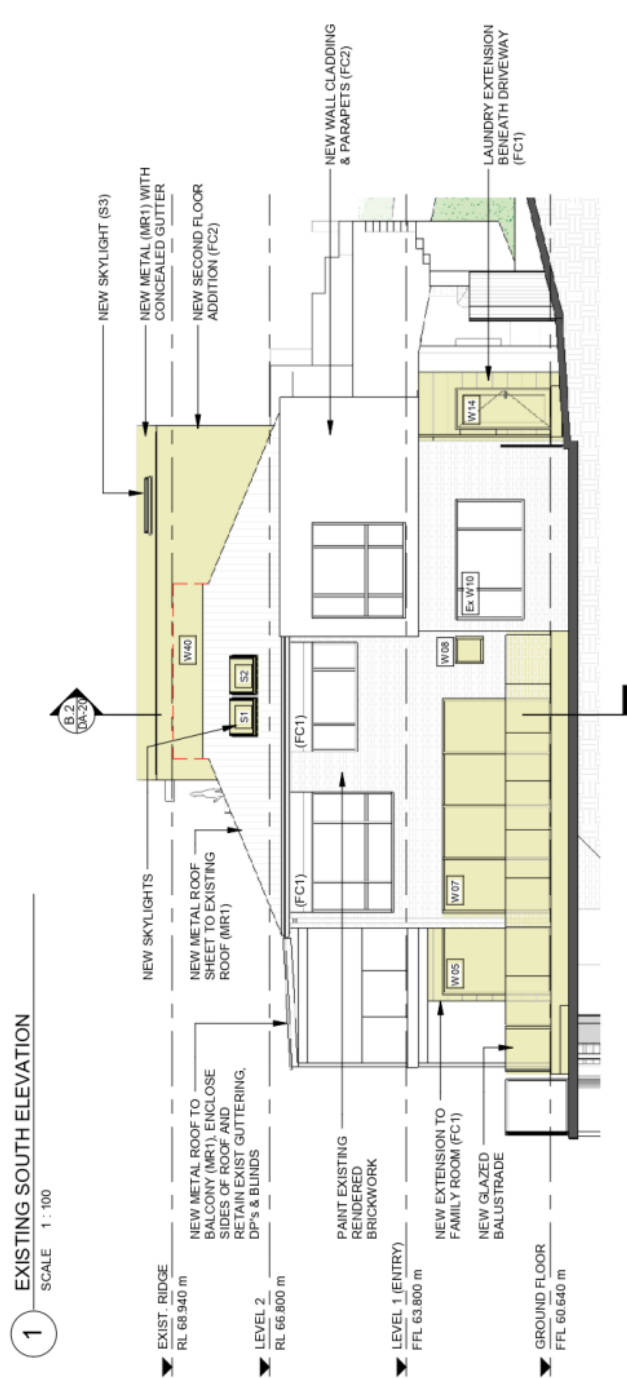
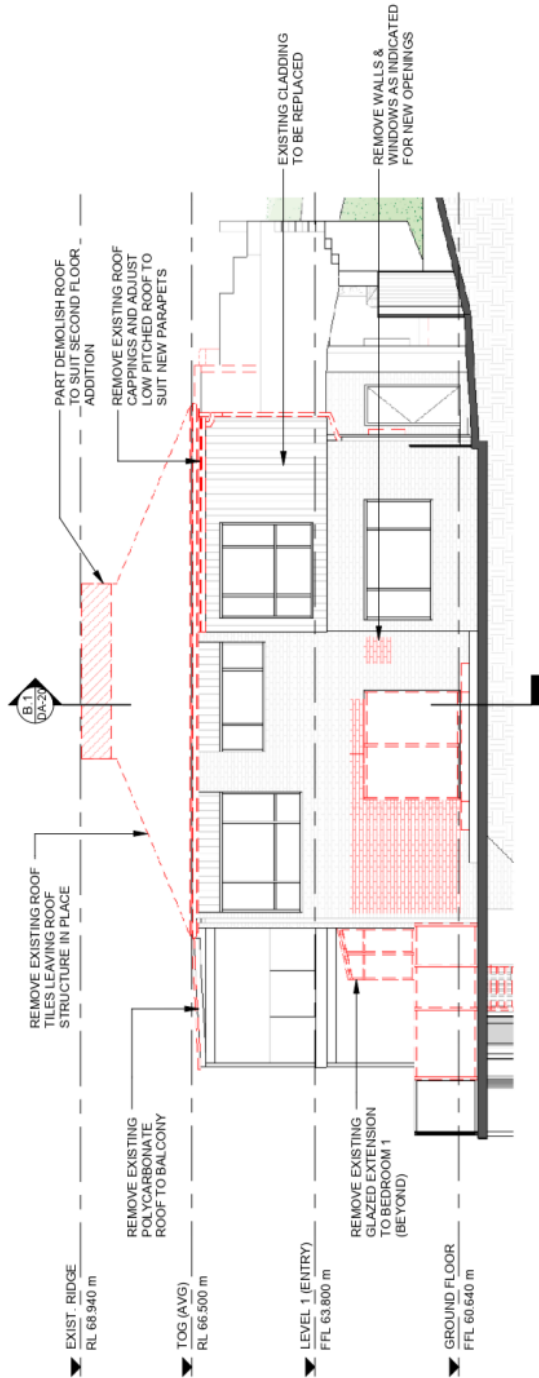
BUSHFIRE CONSTRUCTION REQUIREMENTS:
ANY NEW ROOFING AND ALL NEW WORKS FACING NORTH, SOUTH AND WEST SHALL COMPLY WITH AUSTRALIAN STANDARD AS3958-2018 "CONSTRUCTION OF BUILDINGS IN BUSH-FIRE PRONE AREAS" SECTIONS 3 & 4 (BAL 29) AND SECTION 7.5 OF PLANNING FOR BUSHFIRE PROTECTION 2019.
ALL NEW WORKS FACING EAST SHALL COMPLY WITH AUSTRALIAN STANDARD AS3958-2018 "CONSTRUCTION OF BUILDINGS IN BUSH-FIRE PRONE AREAS" SECTIONS 3 & 4 (BAL 19) AND SECTION 7.5 OF PLANNING FOR BUSHFIRE PROTECTION 2019.
REFER TO THE ASSOCIATED BUSHFIRE ASSESSMENT REPORT FOR FURTHER DETAILS - REF #210200, DATED 22/09/2020.

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PROJECT
Dix-Barr Residence
53 Castle Circuit
Seaford NSW 2092

TITLE
EXISTING & PROPOSED SOUTH ELEVATION
NOT For Construction

NORTH	JOB No.	20-03
	DATE	JUNE 2020
	SCALE	A3 @ 1:100
	DWG No.	DA-14 A

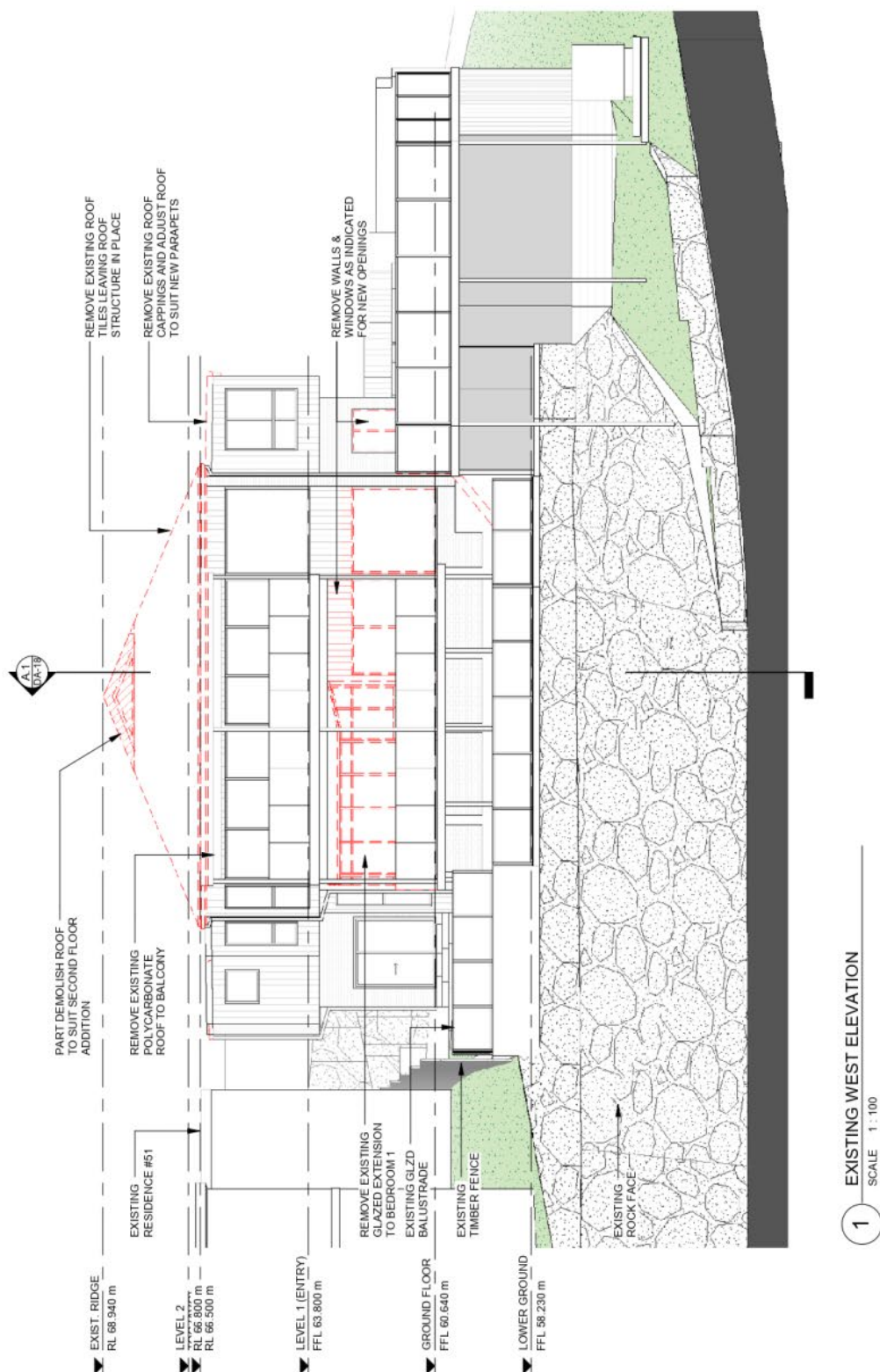


Rev.	Description	Date
A	FOR DEVELOPMENT APPLICATION	08/11/20

KEY:

	PROPERTY BOUNDARY
	EXISTING BUILDING
	EXISTING SOFT LANDSCAPING
	DEMOLITION
	PROPOSED ALTERATIONS
	PROPOSED NEW WALLS
	STORMWATER
	SEWER
RL	RELATIVE LEVEL
FL	FINISHED FLOOR LEVEL
DP	DOWN PIPE
WO	WATER OUTLET
GHW	INSTANTANEOUS GAS HOT WATER UNIT
A/C	AIR CONDITIONING UNIT
ES	ELECTRICAL BOARD
EX	EXISTING

DRAWN BY: L. MITCHELL B ARCH E: l.mitchell@ozemail.com M: 0437406920		PROJECT	
Dix-Barr Residence 53 Castle Circuit Seaford NSW 2092		TITLE EXISTING WEST ELEVATION	
NORTH		JOB No. DATE	20-03 JUNE 2020
SCALE 1 : 100		A3	1 : 100
DWG No.		DA-15 A	



Rev	Description	Date
A	FOR DEVELOPMENT APPLICATION	20-03

KEY:

- PROPERTY BOUNDARY
- EXISTING BUILDING
- EXISTING SOFT LANDSCAPING
- DEMOLITION
- PROPOSED ALTERATIONS
- PROPOSED NEW WALLS

STORMWATER

SEWER

RELATIVE LEVEL

FINISHED FLOOR LEVEL

DOWN PIPE

RANWATER OUTLET

INSTANTANEOUS GAS HOT

WATER SUPPLY

A/C

AR/CONDITIONING UNIT

EB

ELECTRICAL BOARD

SS

SEWER STACK

EX

EXISTING

BUSHFIRE CONSTRUCTION REQUIREMENTS:

ANY NEW ROOFING AND ALL NEW WORKS

FACING NORTH, SOUTH AND WEST SHALL

COMPLY WITH AUSTRALIAN STANDARD

A3395-2018 "CONSTRUCTION OF BUILDINGS

IN BUSH-FIRE PRONE AREAS" SECTION 7

(BAL 29) AND SECTION 7.5 OF PLANNING FOR

BUSHFIRE PROTECTION 2019.

ALL NEW WORKS FACING EAST SHALL

COMPLY WITH AUSTRALIAN STANDARD

A3395-2018 "CONSTRUCTION OF BUILDINGS

IN BUSH-FIRE PRONE AREAS" SECTIONS 3 & 6

(BAL 19) AND SECTION 7.5 OF PLANNING FOR

BUSHFIRE PROTECTION 2019.

REFER TO THE ASSOCIATED BUSHFIRE

ASSESSMENT REPORT FOR FURTHER

DETAILS - REF #210200, DATED 22/09/2020.

DRAWN BY:

L. MITCHELL B ARCH

E. MITCHELL B ARCH

M. MITCHELL B ARCH

PROJECT

Dix-Barr Residence

53 Castle Circuit

Seaford NSW 2092

TITLE

**PROPOSED WEST
ELEVATION**

NOT For Construction

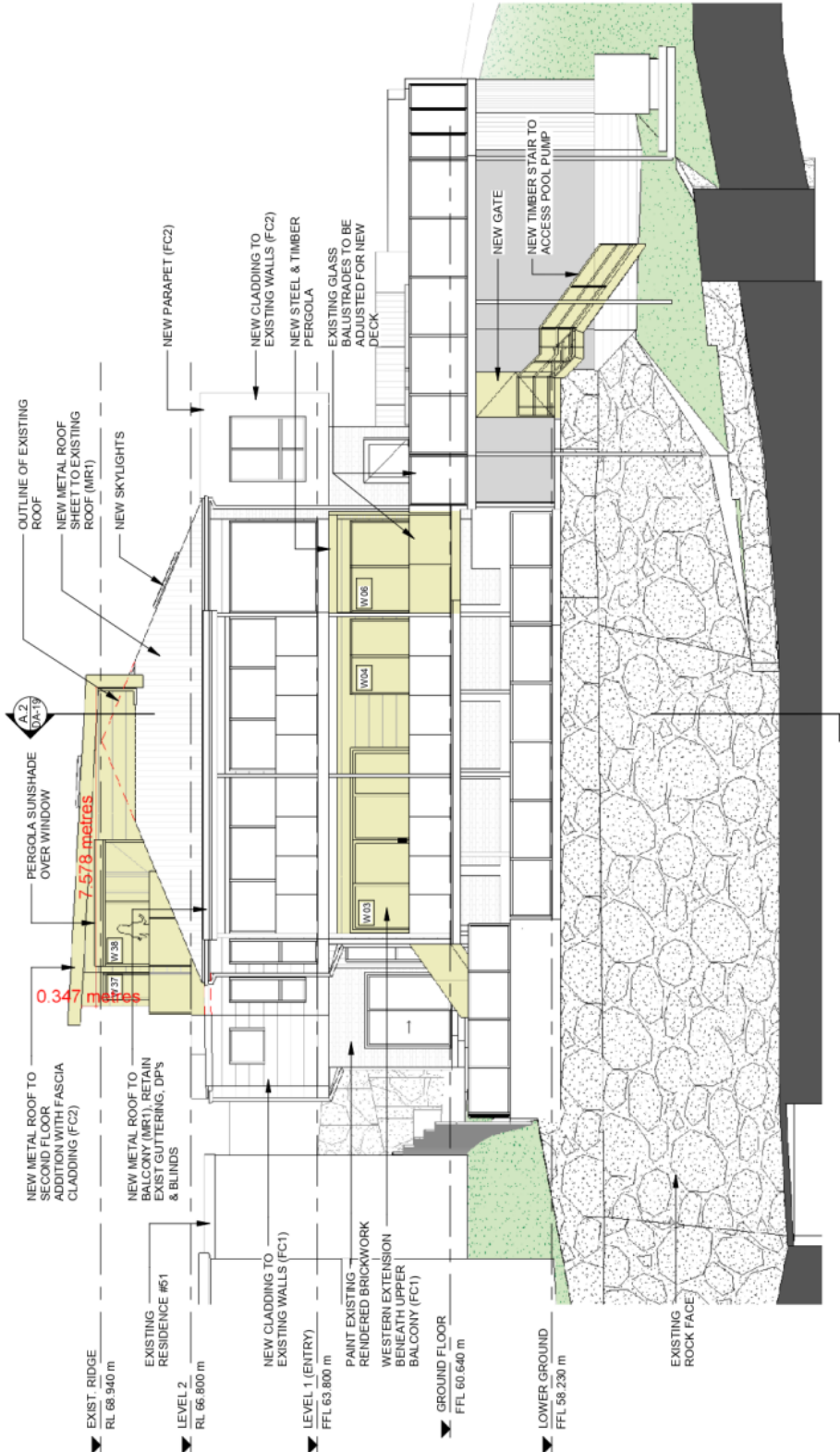
JOB No.

DATE

SCALE

DWG No.

DA-16 A



1 PROPOSED WEST ELEVATION
SCALE 1:100

Rev	Description	Date
A	FOR DEVELOPMENT APPLICATION	20-03

KEY:

- PROPERTY BOUNDARY
- EXISTING BUILDING
- EXISTING SOFT LANDSCAPING
- DEMOLITION
- PROPOSED ALTERATIONS
- PROPOSED NEW WALLS
- STORMWATER
- SEWER

RL RELATIVE LEVEL
FEL FINISHED FLOOR LEVEL
DOW PIPE
RW O RAINWATER OUTLET
GHW INSTANTANEOUS GAS HOT
WATER OUTLET
A/C AIR CONDITIONING UNIT
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EX EXISTING

BUSHFIRE CONSTRUCTION REQUIREMENTS:
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ALL NEW WORKS FACING EAST SHALL COMPLY WITH AUSTRALIAN STANDARD AS3958-2018 "CONSTRUCTION OF BUILDINGS IN BUSH-FIRE PRONE AREAS" SECTIONS 3 & 6 (BAL 19) AND SECTION 7.5 OF PLANNING FOR BUSHFIRE PROTECTION 2019.
REFER TO THE ASSOCIATED BUSHFIRE ASSESSMENT REPORT FOR FURTHER DETAILS - REF #210200, DATED 22/09/2020.

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E. L. MITCHELL B ARCH
M: 0437908920

PROJECT

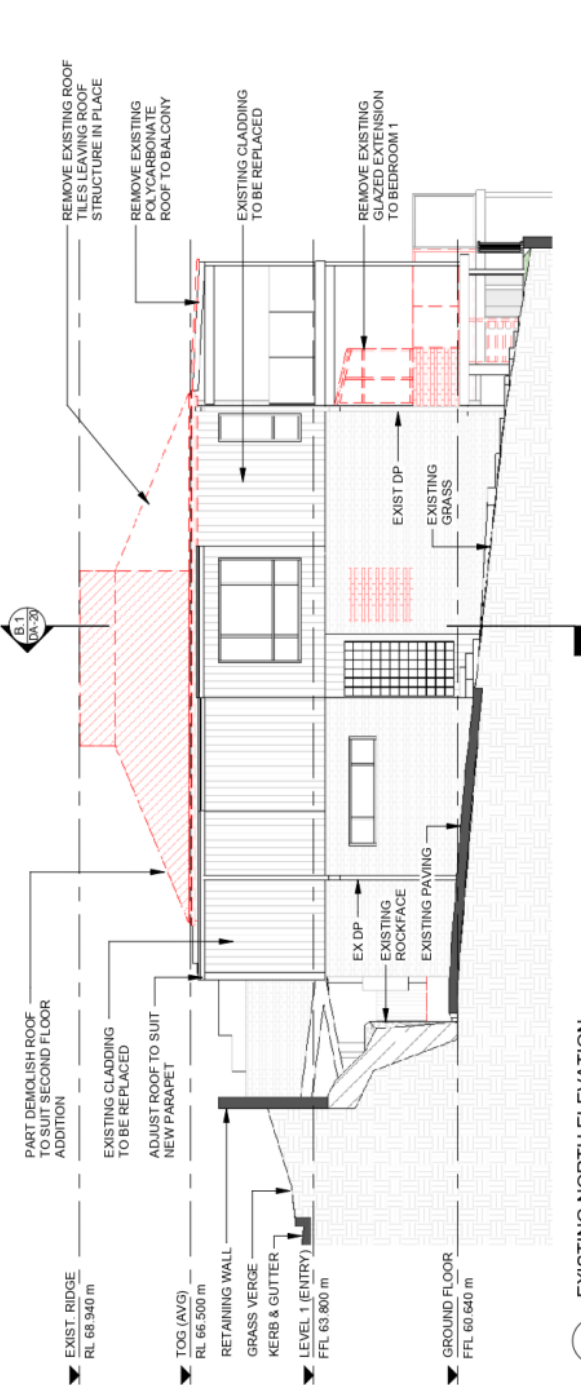
Dix-Barr Residence
53 Castle Circuit
Seaford NSW 2092

TITLE

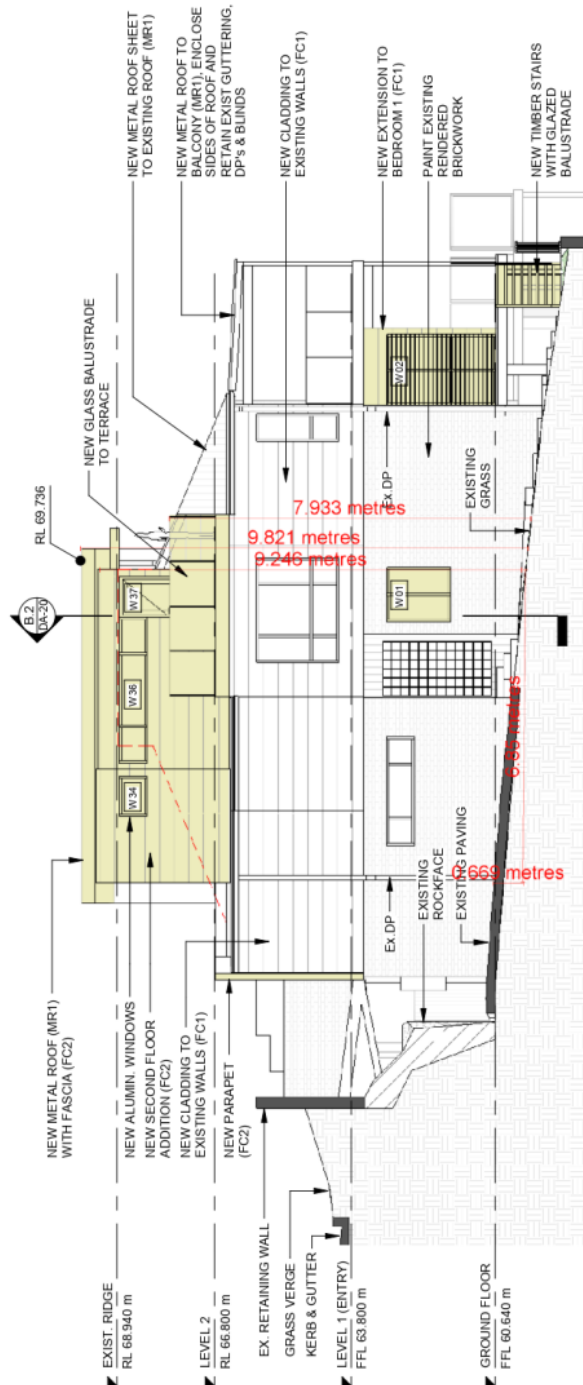
**EXISTING &
PROPOSED NORTH
ELEVATION**

NOT For Construction

NORTH	JOB No.	20-03
	DATE	JUNE 2020
	SCALE	A3 @ 1:100
	DWG No.	DA-17 A



1 EXISTING NORTH ELEVATION
SCALE 1:100



2 PROPOSED NORTH ELEVATION
SCALE 1:100

**OBJECTION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM
BUILDING HEIGHT AS DETAILED IN CLAUSE 4.3 OF THE MANLY
LOCAL ENVIRONMENTAL PLAN 2013**

For: Dwelling Additions/Alterations
At: 53 Castle Circuit, Seaforth
Owner: Ms Deborah Barr
Applicant: Ms Deborah Barr

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.3 restricts the height of a building within this area of the Manly locality and refers to the maximum height noted within the "*Height of Buildings Map*."

The *Height of Building Map* identifies the site as being within the 8.5m maximum height limit.

This clause is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed additions provide for a maximum height of 9.37m which does not comply with the numerical standards of this clause. The proposal represents a maximum non-compliance of 870mm or a 10% variation.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the 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.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing dwelling development which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing single detached dwelling which is compatible with the low density residential environment.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum 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.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 11 & *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).

The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R2 Low Density Residential Zone. The objectives of the E3 zone are noted as:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum building height control the proposed additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density Residential zone for the following reasons:

The proposal provides for alterations and additions to an existing detached dwelling. The proposal does not provide for additional housing and retains the low-density residential environment. The existing locality is characterised by large multi-storey dwellings comprising a variety of architectural styles.

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.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3 (1):

- (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.*

It is considered that the objectives have been achieved for the following reasons:

- The proposal provides for a dwelling that presents as a two storey building when viewed from Castle Circuit. The slope of the site and the location of the new upper level is such that the works will be predominantly obscured when viewed from the southern and western boundaries. The existing surrounding development is characterised by large multi storey dwellings, mainly presenting as large three storey structures.
- The proposal provides for increased setbacks to the new upper level, and incorporates a low pitched roof form and articulation through the use of varied setbacks and external finishes. The proposal complies with the requirements of Council's side and rear boundary setbacks which aims to ensure appropriate bulk and scale. As noted above the proposal complements the existing character of the locality in terms of bulk.
- A detailed view analysis is included in **Appendix C**.
- Given the orientation of the allotment, the proposal does not result in any additional overshadowing to residential zoned land.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing dwelling house, which are constrained by the siting of the existing building and sloping topography of the site.

In the *Wehbe* judgment (*Wehbe v Warringah Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

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

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

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

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

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

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

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

Comment: Not applicable.

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

Comment: The development standard is applicable to and appropriate to the zone.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Due to the existing overall building height and sloping topography of the site, the proposed additions will exceed the maximum height required by Clause 4.3.

The development is justified in this instance for the following reasons:

- Compliance with the height control is constrained by the siting of the building and sloping topography of the site.
- The development does not result in a significant bulk when viewed from either the street or the neighbouring properties.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposal ensures adequate view sharing as discussed in the View Analysis in **Appendix C**.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

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

- The proposal provides for additions to an existing dwelling. The site has a significant slope and it is the slope that results in the non-compliance with the building height.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Castle Circuit, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate amenity, solar access and privacy will be maintained for the neighbouring properties.

The above are the environmental planning grounds which are the circumstances which are particular to the development which merit a variation to the development standard.

7.0 Conclusion

This development proposed a departure from the maximum building height development standard.

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

This written request to vary the maximum building height specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

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

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

Natalie Nolan
NOLAN PLANNING CONSULTANTS

APPENDIX B

OBJECTION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

For: Dwelling Additions/Alterations
At: 53 Castle Circuit, Seaforth
Owner: Ms Deborah Barr
Applicant: Ms Deborah Barr

1.0 Introduction

This written request was made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard it is requested Council support a variation with respect to compliance with the maximum floor space ratio as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the floor space ratio of a building within this area of the Manly locality and refers to the maximum floor space noted within the "*Floor Space Ratio Map*."

The *Floor Space Ratio Map* provides for a maximum FSR of 0.4:1 for the subject site.

This clause is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed additions provide for a maximum FSR of 285m² or 0.48:1 which does not comply with the numerical standards of this clause. The proposal represents a maximum non-compliance of 49.8m² or a 21% variation.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the 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.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing dwelling development which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing single detached dwelling which is compatible with the low density residential environment.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum floor space, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 11 & *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).

The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R2 Low Density Residential Zone. The objectives of the E3 zone are noted as:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum floor space ratio control the proposed additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density Residential zone for the following reasons:

The proposal provides for alterations and additions to an existing detached dwelling. The proposal does not provide for additional housing and retains the low-density residential environment. The existing locality is characterised by large multi-storey dwellings comprising a variety of architectural styles.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum floor space ratio controls, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.4 are articulated at Clause 4.4 (1):

- (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.*

It is considered that the objectives have been achieved for the following reasons:

- The proposal provides for a dwelling with a bulk and scale that is consistent with the existing streetscape character. The existing surrounding development is characterised by large multi storey dwellings, mainly presenting as large three storey structures.
- The proposal provides for increased setbacks to the new upper level, and incorporates a low pitched roof form and articulation through the use of varied setbacks and external finishes. The proposal complies with the requirements of Council's side and rear boundary setbacks which aims to ensure appropriate bulk and scale. As noted above the proposal complements the existing character of the locality in terms of bulk.
- The proposal maintains an appropriate visual relationship between new development and the existing character of the landscape. The proposed additions provide for increased setbacks to the boundaries of the site and do not require the removal of any vegetation.
- A detailed view analysis is included in **Appendix C**.

- Given the orientation of the allotment, the proposal does not result in any additional overshadowing to residential zoned land.
- The proposal does not have any adverse impact on the use or enjoyment of the adjoining land or the public domain. The proposal is a well designed addition that maintains privacy and appropriate view sharing for the surrounding properties.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing dwelling house, which are constrained by the reduced lot size.

In the *Wehbe* judgment (*Wehbe v Warringah Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

6. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

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

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

8. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

9. *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;*

Comment: Not applicable.

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

Comment: The development standard is applicable to and appropriate to the zone.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Due to the reduced allotment size, the proposed additions will exceed the maximum floor space ratio required by Clause 4.3.4

The development is justified in this instance for the following reasons:

- The development does not result in a significant bulk when viewed from either the street or the neighbouring properties.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposal ensures adequate view sharing as discussed in the View Analysis in **Appendix C**.
- The subject site is an undersized allotment. Clause 4.1.3.1 of the Manly DCP provides for exceptions to the FSR for undersized allotments as follows:

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 maximum variation to FSR on undersized lots is '*Calculation of FSR based on 750 sqm lot size/ site area*'.

In this regard, the proposed gross floor area of 285m² based on a site area of 750m² would equate to a FSR 0.38:1.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building floor space ratio.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

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

- The proposal provides for additions to an existing dwelling. The site has a reduced allotment size that results in the non-compliance with the floor space ratio.
- The non-compliance does not result in any unreasonable impacts.
- The subject site is an undersized allotment. Clause 4.1.3.1 of the Manly DCP provides for exceptions to the FSR for undersized allotments as follows:

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 maximum variation to FSR on undersized lots is 'Calculation of FSR based on 750 sqm lot size/ site area'.

In this regard, the proposed gross floor area of 285m² based on a site area of 750m² would equate to a FSR 0.38:1.

- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Castle Circuit, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate amenity, solar access and privacy will be maintained for the neighbouring properties.

The above are the environmental planning grounds which are the circumstances which are particular to the development which merit a variation to the development standard.

7.0 Conclusion

This development proposed a departure from the maximum floor space development standard.

This variation occurs as a result of the reduced lot size and the non-compliance does not result in any unreasonable impacts.

This written request to vary the maximum floor space ratio specified in Clause 4.4 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

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

Strict compliance with the maximum floor space ratio control would be unreasonable and unnecessary in the circumstances of this case.

Natalie Nolan
NOLAN PLANNING CONSULTANTS

ITEM 3.3

**MOD2020/0605 - 5 EDGECLIFFE BOULEVARDE COLLAROY
PLATEAU - MODIFICATION OF DEVELOPMENT CONSENT
DA2018/1373 FOR DEMOLITION WORKS, CONSTRUCTION OF
A NEW DWELLING HOUSE INCLUDING A SWIMMING POOL**

REPORTING MANAGER **Lashta Haidari**

TRIM FILE REF **2021/248807**

ATTACHMENTS

1 Assessment Report

2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Mod2020/0605 for Modification of Development Consent DA2018/1373 for demolition works, construction of a new dwelling house including a swimming pool on land at Lot 2 DP 1209331, 5 Edgecliffe Boulevard, Collaroy Plateau, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0605
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 2 DP 1209331, 5 Edgecliffe Boulevarde COLLAROY PLATEAU NSW 2097
Proposed Development:	Modification of Development Consent DA2018/1373 for demolition works, construction of a new dwelling house including a 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:	Michael Frederick Moore Jane Yolande Moore
Applicant:	Michael Frederick Moore
Application Lodged:	17/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/11/2020 to 11/12/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

Modification application (MOD2020/0605) has been made to modify a consent under DA2018/1373 which was granted for demolition works, construction of a new dwelling house including a swimming pool. Under the modification a number of changes are requested, especially toward the rear of the site. The changes particularly relate to extensions of private open space, screening, fencing, landscaping, and other features ancillary to the approved dwelling.

Public exhibition of the development resulted in one objection to the proposal. This objections raised a number of issues particularly in regard to the amenity impact that the proposal would have on the

neighboring property.

Amended plans were submitted on 4 April 2021. These plans involved design changes to the upper level balcony, redesign of the proposed privacy screen, and deletion of the rear deck (in accordance with comments provided by Council's Landscape officer).

Conditions have been imposed to ensure a reasonable balance is provided between providing an open space area for the applicant, whilst also ensuring a reasonable outcome is found for privacy impact and view sharing. In particular, the recommended conditions provide the following amendments to provide a reasonable amenity outcome:

- A restriction on the length of the southern privacy screen and a design which allows for access to views
- Deletion of a proposed balustrade and relocation to a suitable position which provides appropriate physical separation of the private open space from the neighbour
- Screening of the proposed air conditioner; and
- Restriction on the height of the proposed masonry at the south of the site.

Accordingly, the application is referred to the DDP with a recommendation for approval subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to modify the approved demolition works and construction of a new dwelling under DA2018/1373. In detail, the proposal (as amended) involves:

- A southern boundary fence
- Relocation of stairs to access pool filter and lower area
- Northern side timber deck adjacent to pool
- Air conditioner unit
- External stairs
- Extension to first floor balcony (balustrading to first floor roof)
- South eastern privacy screen
- Western balcony privacy screens
- Northern boundary fence
- Landscaping
- Front door access deck and side stairs
- Access stairs and side path

Amended plans were submitted on 4 April 2021. These plans involved the following changes:

- A non-trafficable area with planter boxes to surround the proposed upper level balcony
- Further details in regard to the louvres of the privacy screen at the southern elevation (louvres with an angle of 60 degrees)
- Deletion of the rear deck

These plans did not require formal re-notification in accordance with the Northern Beaches Community Participation plan. However, the most affected neighbour was notified of the amendments by email.

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 - D7 Views

Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D15 Side and Rear Fences

SITE DESCRIPTION

Property Description:	Lot 2 DP 1209331 , 5 Edgecliffe Boulevarde COLLAROY PLATEAU NSW 2097
Detailed Site Description:	<p>The subject site consists of 1 allotment legally known as Lot 2 DP 1209331. It is located on the eastern side of Edgecliffe Boulevarde.</p> <p>The site is irregular in shape with a frontage of 14.85m along Edgecliffe Boulevarde and a depth of 46.81m. The site has a surveyed area of 679.6m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two story dwelling with an attached carport. The property gains vehicular access via a right-of-carriageway over No. 3A Edgecliffe Boulevard.</p> <p>The site is characterised by a significant slope, which falls approximately 14.62 metres from the western boundary to the eastern boundary.</p> <p>Adjoining and surrounding development is characterised by relatively large detached residential dwellings, many of</p>

which gain sweeping views of Collaroy and Narrabeen Beach, the ocean and district views to the north and east. Adjoining the eastern boundary of the subject site is a public reserve that contains dense vegetation.

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:

DA2017/1190

This DA was for the construction of a dwelling house, an attached secondary dwelling and a swimming pool, it was withdrawn on 22 February 2018 due, in part, to engineering issues associated with Council's drainage pipe on the subject site. The proposal also contained unacceptable non-compliances with the building height control, wall height, side boundary envelope, side boundary setback, front boundary setback and landscaped open space requirements.

DA2018/1373

This application was very similar to the previous application, with the main differences being the deletion of the secondary dwelling, revising the design to reduce the extent of, or remove the non-compliances and addressing the engineering issues.

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
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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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information.</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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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 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.

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 DA2018/1373, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The proposal is of minimal environmental impact due to the lack of additional building bulk and the maintenance of natural features on the site. Further to this, reasonable physical separation is provided (and can be conditioned) between elements of the proposal and neighbouring properties. This ensures impact on amenity is minimised to contribute to a minimal environmental impact.</p>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted	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 DA2018/1373 for the following reasons:

Section 4.55(1A) - Other Modifications	Comments
and before that consent as originally granted was modified (if at all), and	The proposal maintains the use of the site as a dwelling house, and generally maintains the existing building footprint. There is also no change to the amount of floor space on site and natural features are maintained (to be consistent with the original consent). As such, the proposal is found to be substantially the same as the original consent.
(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, Warringah Local Environment Plan and Warringah Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	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 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

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

Section 4.15 'Matters for Consideration'	Comments
	risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</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>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>
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 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 27/11/2020 to 11/12/2020 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Richard Lindsay Tebbutt Mrs Johanean Philipina Tebbutt	3 A Edgecliffe Boulevarde COLLAROY PLATEAU NSW 2097

The matters raised within the submissions are addressed as follows:

- **Illegal works and retrospective approval**

Comment:

A precedent was established by Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240 in regard to consent that can be granted for retrospective approval under Section 4.55 (formerly s.96) of the Environmental Planning and Assessment Act 1979. As such, works that have already been completed can be assessed under this s4.55 application.

- **Height of southern boundary fence; not compliant with control; inaccurate representation of wall on plans (including inaccurate yellow line); inappropriate balance between privacy and views caused by fence.**

A claim has also been made that the land has been raised and a request is made that specific height requirements be placed on the fence (including averaging).

Request for wall to have same materials/ render on both sides.

Comment:

A condition has been imposed to restrict the height of the fence to be no greater than 1.8m, measured using the original survey. This ensures the measurement is reasonable and takes in to account any fill which has occurred since the consent was granted.

The condition also imposes a render to be the finish on each side of the wall.

- **Location of air conditioner**

Comment:

The air conditioner complies with the numerical side setback requirement, and subject to a condition for screening, the air conditioner would not cause any unreasonable visual or acoustic impact.

- **Unreasonable amenity impact caused by proposed balustrading of first floor area; Unwanted precedent that would be caused by first floor entertainment area; Unreasonable claims that balustrading is required for access**

Inappropriate non-trafficable area (including pebbles) in amended plans; view impact caused by planter boxes.

Site photos taken do not do justice to the extent of privacy impact.

Comment:

A condition is imposed to delete the proposed glass balustrade in its current location and delete the proposed planter boxes. This is to be replaced with a balustrade which is well separated from the neighbouring property. This provides a reasonable physical separation between the subject site open space and the neighbour (further discussed under *D8 Privacy*).

Site photos are taken to assist in understanding and assessing impact. However, it is understood photos can provide limitations, and a full assessment of the application involves assessment of all information submitted (including plans and surveys) as well as a site visit.

- **Impacts caused by south-eastern privacy screen; Council previously considered privacy screen to be inappropriate and the screen was therefore deleted; unreasonable claims for privacy; statement that privacy screen should not be approved but request for angle of louvres to be 75 degrees and gap between louvres to be 200mm if it were to be approved; concern raised with proposed length of 1.8m (as opposed to previously proposed 1.2m);**

Concern regarding referenced to 'cross beam'

Comment:

As further discussed under *D7 Views*, a reasonable view sharing outcome is found through a design of the screen which considers the neighbouring view corridors. As such, a condition is proposed to provide a privacy screen with a length of 1.2m, gaps of 200mm between louvres, and an angle of louvres to suit the view corridor (75 degrees).

The cross beam referenced is to be provided within the scope of construction plans which are to be consistent with the condition of consent.

- **Works in the nature strip**

Comment:

Council's Road reserve officer has reviewed the works and provided that they are acceptable subject to submitting a minor encroachment application.

- **Side elevation has not been converted to stone cladding (as has been approved)**

Comment:

Works in regard to the development application have not yet been completed. If all works are not completed when an Occupation Certificate issued, a complaint can be sent to Council's Building compliance team to be investigated.

- **Incorrect claims made by applicant in regard to extent of impact and use**

Comment:

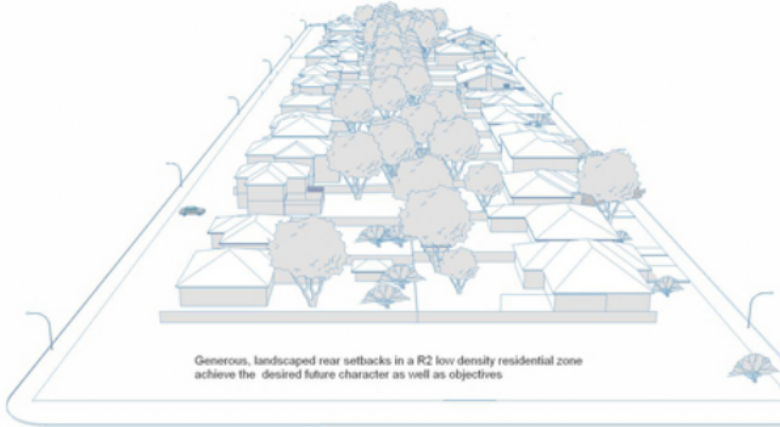
Claims made by the applicant in regard to the proposal are considered as opinion. Council makes an assessment based on all information presented including plans, documents and any submissions made by the public.

- **Incorrect reference to 'approved pool fence'**
Comment:
A condition has been provided to remove the notation that the pool fence has been approved.
- **Impact on house and property value**
Comment:
Property value is not a relevant consideration in accordance with the *Environmental Planning and Assessment Act 1979*.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposed modification indicates construction of a raised deck adjacent to the pool area boundary. Comparison of the proposed deck height (RL74.789) with the existing contour the Survey Plan for the original DA (RL73.00) indicates that the deck will be 1.785m above level along its eastern edge.</p> <p>The proposal is considered to be at odds with WDCP B9 Rear Boundary Setbacks and V Development on land adjoining public open space. The site is also noted to be mapped as a Wildlife Corridor.</p> <p>The proposed location of the deck is not supported and it is recommended that the area be a soft landscape area.</p> <p>E7 Development on land adjoining public open space</p> <p>Applies to Land</p> <p>This control applies to all land shown on <u>DCP Map Land Adjoining Public Open Space</u></p> <p>Objectives</p> <ul style="list-style-type: none"> • To protect and preserve <u>bushland</u> adjoining parks, <u>bushland</u> reserves and other public open spaces. • To ensure that development responds to its adjacent surroundings to preserve and natural qualities of the environment. • Development on land adjoining open space is to complement the landscape character and use and enjoyment of the adjoining parks, <u>bushland</u> reserves and other public open spaces. <p>Requirements</p> <p>1. Development on land adjoining public open space is to complement the landscape and public use and enjoyment of the adjoining parks, <u>bushland</u> reserves and other public open spaces.</p>

Internal Referral Body	Comments
	<p>2. Public access to public open space is to be maximised.</p> <p>3. Buildings are to be located to provide an outlook to public open space, without appropriate private space.</p> <p>4. Development is to provide a visual transition between open space, <u>bushland</u> reserves and public spaces and buildings, including avoiding abutting public open space with back fences.</p> <p>5. Development is to protect views to and from public open space.</p> <p>6. Development is to provide buffers for bushfire protection on private land, not on public land.</p> <p>7. If the adjoining parks, <u>bushland</u> reserves or public open space contain <u>bushland</u>, development is not to threaten the protection or preservation of the <u>bushland</u>.</p> <p>8. Development should be designed to maximise opportunities for casual surveillance of public open space.</p> <p>9. Development is to utilise landscaping or existing landscape elements to screen development from public open space.</p> <p><u>Warringah Development Control Plan » Part B Built Form Controls » B9 Rear Boundary Setbacks</u></p> <p>B9 Rear Boundary Setbacks</p> <p>Applies to Land</p> <p>This control applies to land shown coloured on the <u>DCP Map Rear Boundary Setbacks</u> except the exception of land identified as 'Merit Assessment'.</p> <p>Objectives</p> <ul style="list-style-type: none"> • To ensure opportunities for deep soil landscape areas are maintained. • To create a sense of openness in rear yards. • To preserve the amenity of adjacent land, particularly relating to privacy between dwellings. • To maintain the existing visual continuity and pattern of buildings, rear garden and landscape elements. • To provide opportunities to maintain privacy between dwellings.

Internal Referral Body	Comments
	<p data-bbox="596 577 1066 607">Landscaped open space in the rear setback</p>  <p data-bbox="778 1014 1171 1043">Generous, landscaped rear setbacks in a R2 low density residential zone achieve the desired future character as well as objectives</p> <p data-bbox="497 1220 679 1249">Requirements</p> <ol data-bbox="513 1283 1369 1368" style="list-style-type: none"> 1. Development is to maintain a minimum setback to rear boundaries. 2. The rear setback area is to be landscaped and free of any above or below structures. <p data-bbox="384 1473 721 1503"><u>Assessing officer Comment</u></p> <p data-bbox="384 1532 1369 1561">Amended plans were submitted which involve deletion of the deck and a return to landscaped</p>
NECC (Development Engineering)	No development engineering objections subject to conditions
Road Reserve	No impact on existing road assets. Stairs on road reserve are acceptable subject to subn application for Minor Encroachment with further details.

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. 876220M).

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

Commitment	Required Target	Proposed
Water	40	53
Thermal Comfort	Pass	Pass
Energy	50	50

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.93m	7.7m (balustrade)	5.06% (approved) 0% (new elements proposed)	No (approved) Yes

					(proposed)
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Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B3 Side Boundary Envelope	5m	Outside	Within	Yes (proposed balcony) No (existing approved building)
	5m	Outside	Within	Yes (proposed balcony) No (existing approved building)
B5 Side Boundary Setbacks	0.9m	0.9m	0.9m (non-trafficable area) 2.3m (aluminium edge to be conditioned as a balustrade)	Yes
	0.9m	2m	2m	Yes
B9 Rear Boundary Setbacks	6m	5.6m-15.8m	12m	Yes (proposed balcony)
D1 Landscaped Open Space and Bushland Setting	40%	43%	43%	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	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	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D7 Views

Merit consideration

At the southern elevation, the proposal involves planter boxes to the upper level balcony, and a privacy screen to the lower level.

In order to provide an appropriate balance between privacy and views, conditions are imposed in regard to these elements.

In this regard, the proposed planter boxes are to be deleted and replaced with a non-trafficable area outlined by a balustrade (instead of proposed aluminium).

The following condition is also imposed in regard to the proposed privacy screen:

"The proposed privacy screen at the southern elevation is to be amended to provide the following:

- *Width between louvres of 200mm*
- *Blades at an angle of 75 degrees toward the east*
- *A length of 1.2m along the southern elevation (reduced from 1.8m)*

Reason: To ensure retention of views."

As a result of the imposed conditions, the development is considered against the underlying Objectives of the Control as follows:

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

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

3A Edgecliffe Boulevard, Collaroy Plateau

1. Nature of the views affected

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

Comment to Principle 1:

The site has extensive views toward the ocean over the rear boundary, views toward long reef, and also views toward Narrabeen Beach over the northern side boundary. The views are partially interrupted by development along the coastline.

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

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

Comment to Principle 2:

Views over the subject site are obtained over a side boundary, and can be enjoyed from both a sitting and standing position.

3. Extent of impact

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

Comment to Principle 3:

The views over the subject site are obtained through a side window from a kitchen and living area, and from a rear deck area. The condition above ensures a restriction on length of the privacy screen (1.2m) to allow for an appropriate view corridor to be maintained from the rear deck. This includes an ability to view Narrabeen Beach from the majority of the deck. The condition above also provides opportunity for view through the privacy screen from the living area, also toward Narrabeen Beach. The retention of these two side boundary view corridors provides a circumstance in which the extent of impact is minor (subject to conditions).

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal privacy screen complies with all relevant planning controls. This includes side setback, side boundary envelope, and rear setback. As such, the minor impact that arises (after conditions have been imposed) provides a reasonable view sharing outcome.

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

Comment:

The proposed angling of the privacy screen louvres provides an opportunity for an improvement to privacy that also balances a reasonable view sharing outcome.

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

Comment:

The proposed works are generally below surrounding canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposed balcony area complies with the Warringah DCP built form controls which are relevant to providing physical separation (side and rear boundary setback, and side boundary envelope). This separation between the trafficable area of the balcony, and the neighbouring bedroom window is 4m at the closest point. This separation is greater than many other examples of setbacks to open space above ground in the area, and provides an outcome in which overlooking and acoustic impact is minimised.

The total area of the new section of proposed balcony area (accessing the sitting area) is 25m². This requirement for private open space for a dwelling house under the Warringah DCP is 35m². Although private open space is provided on the opposite side of the site, this indicates that the size of this space total size of this space is of a scale that can be generally expected for this development type. As such, the proposed area provides a reasonable design for visual and acoustic privacy (subject top conditions).

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

Comment:

The proposed non trafficable area to the balcony provides a design solution in which adequate physical separation is provided between the subject site and the neighbouring property.

- *To provide personal and property security for occupants and visitors.*

Comment:

The dwelling maintains opportunity for an enclosed dwelling to provide personal and property security for occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstances.

D15 Side and Rear Fences

The following condition is imposed in regard to the boundary fence at the south of the site:

"The southern masonry fence is to be no greater than 1.8m in height at any point. The height is to be measured for the lower side of the fence using the survey submitted with DA2018/1373 as a guide for measurement.

Each elevation of the fence is also to be provided with a rendered finish.

Reason: To ensure a reasonable balance between privacy and view sharing."

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

This report provides an assessment of the application to modify DA2018/1373 which was granted for use of part of the car parking area associated with the demolition works, construction of a new dwelling house including a swimming pool.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, the relevant codes and policies of Council, the relevant provisions of the Warringah DCP.

Public Exhibition

The public exhibition of the DA resulted in one objection. This objection raised a number of issue particularly in regard to the amenity impact that the proposal would have on the neighboring property.

The issues raised in the submissions have been addressed in the 'Public Exhibition & Submissions' section of this report.

Conditions have been imposed to reduce amenity impact to a reasonable level.

It is recommended that the Development Determination Panel approve the application subject to conditions.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0605 for Modification of Development Consent DA2018/1373 for demolition works, construction of a new dwelling house including a swimming pool on land at Lot 2 DP 1209331, 5 Edgecliffe Boulevard, COLLAROY PLATEAU, 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
DA03 - Lower Ground Floor	29/10/2020 (submitted to council on 4/03/21)	Olive and Green
DA04- Ground Floor Plan	29/10/2020 (submitted to council on 4/03/21)	Olive and Green
DA05- First Floor Plan	29/10/2020 (submitted to council on 4/03/21)	Olive and Green
DA06- West Elevation	29/10/2020 (submitted to council on 4/03/21)	Olive and Green

DA07- North Elevation	29/10/2020 (submitted to council on 4/03/21)	Olive and Green
DA08- East Elevation	29/10/2020 (submitted to council on 4/03/21)	Olive and Green
DA09- South Elevation	29/10/2020 (submitted to council on 4/03/21)	Olive and Green
DA12-Landscape Area	29/10/2020 (submitted to council on 4/03/21)	Olive and Green
Ground Floor Plan - Excerpt of DA04_A	29/10/2020 (submitted to council on 4/03/21)	Olive and Green

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

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

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

B. Add Condition 1A Non-trafficable area to balcony at First Floor Level to read as follows:

The proposed privacy screen at the southern elevation is to be amended to provide the following:

- Width between louvres of 200mm
- Blades at an angle of 75 degrees toward the east
- A length of 1.2m along the southern elevation (reduced from 1.8m)

Details are to be provided prior to the issue of Construction Certificate.

Reason: To ensure retention of views.

C. Add Condition 1B Non-trafficable area to balcony at First Floor Level to read as follows:

The proposal is to provide the following amendments:

- The proposed glass balustrade around the perimeter of the roof is to be deleted.
- The proposed planter boxes are to be deleted
- The proposed "aluminum edge" is to be replaced with a glass balustrade along the southern and eastern elevation.

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To minimise amenity impact by providing reasonable physical separation between the neighbour and the proposed balcony.

D. Add Condition 1C Restriction on height of southern side boundary fence to read as follows:

The southern masonry fence is to be no greater than 1.8m in height at any point. The height is to be measured for the lower side of the fence using the survey submitted with DA2018/1373 as a guide for measurement.

Each elevation of the fence is also to be provided with a rendered finish.

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure a reasonable balance between privacy and view sharing.

E. Modify Condition 2 Amendments to the approved plans to read as follows:

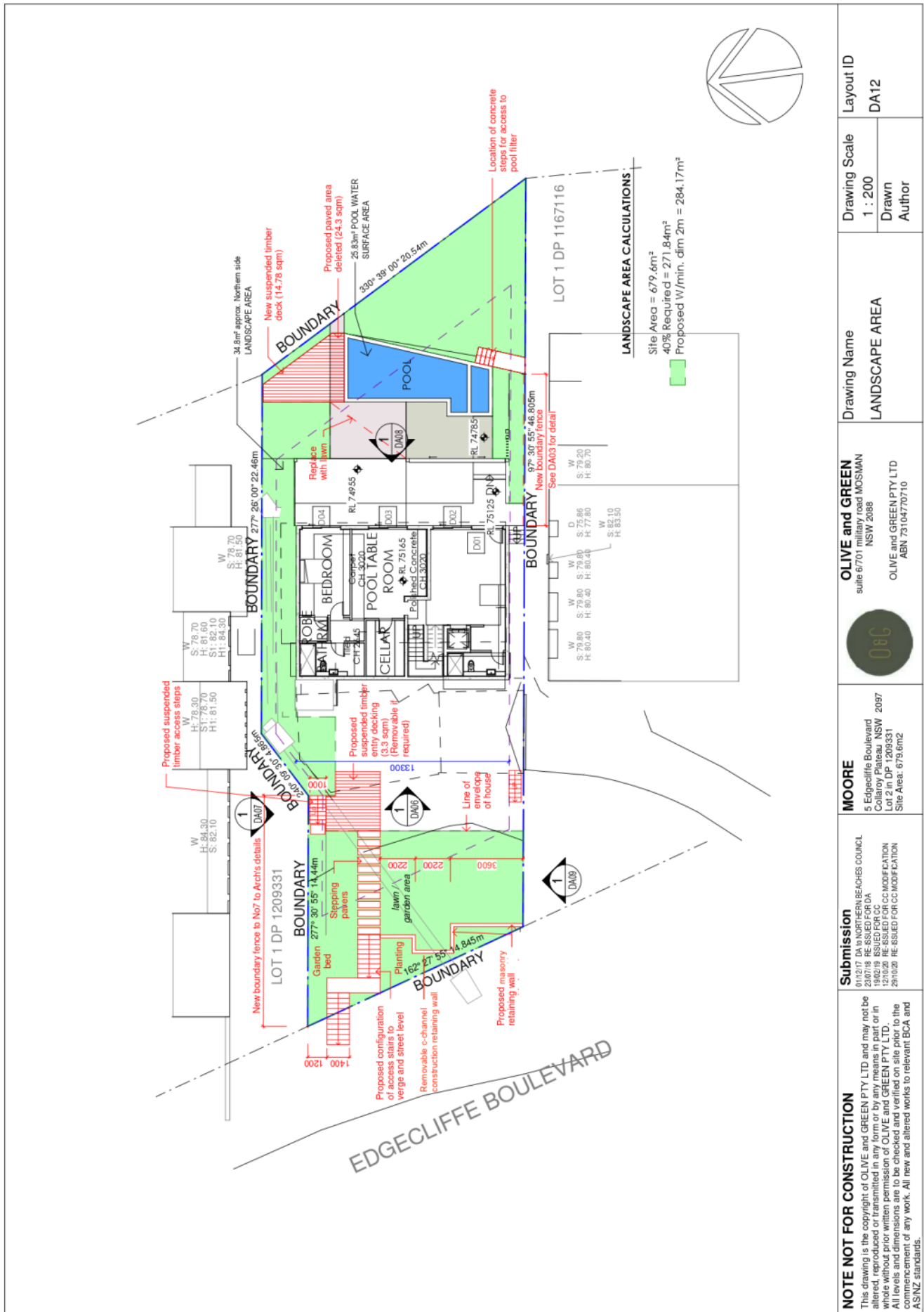
The following amendments are to be made to the approved plans:

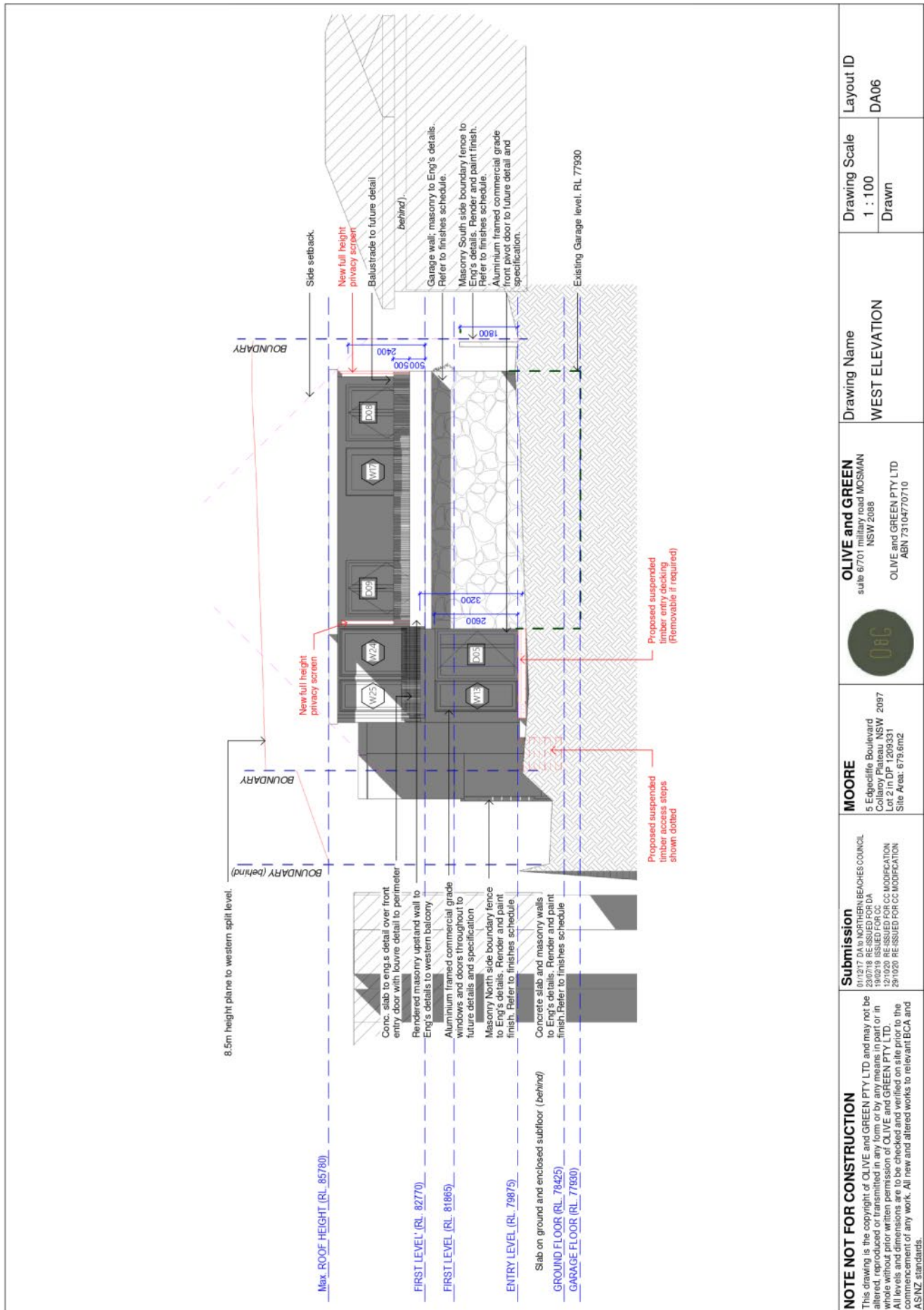
All parts of the privacy screen, at the eastern end of the southern elevation, that extend past the rear wall of the dwelling, are to be deleted.

The paving around the pool (as shown on Landscape Plan L-01 Revision D) is to be reduced to match Plan No. D12 - Landscape Area. This is to ensure the site maintains adequate landscaped open space.

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.





Layout ID
DA06

Drawing Scale
1 : 100
Drawn

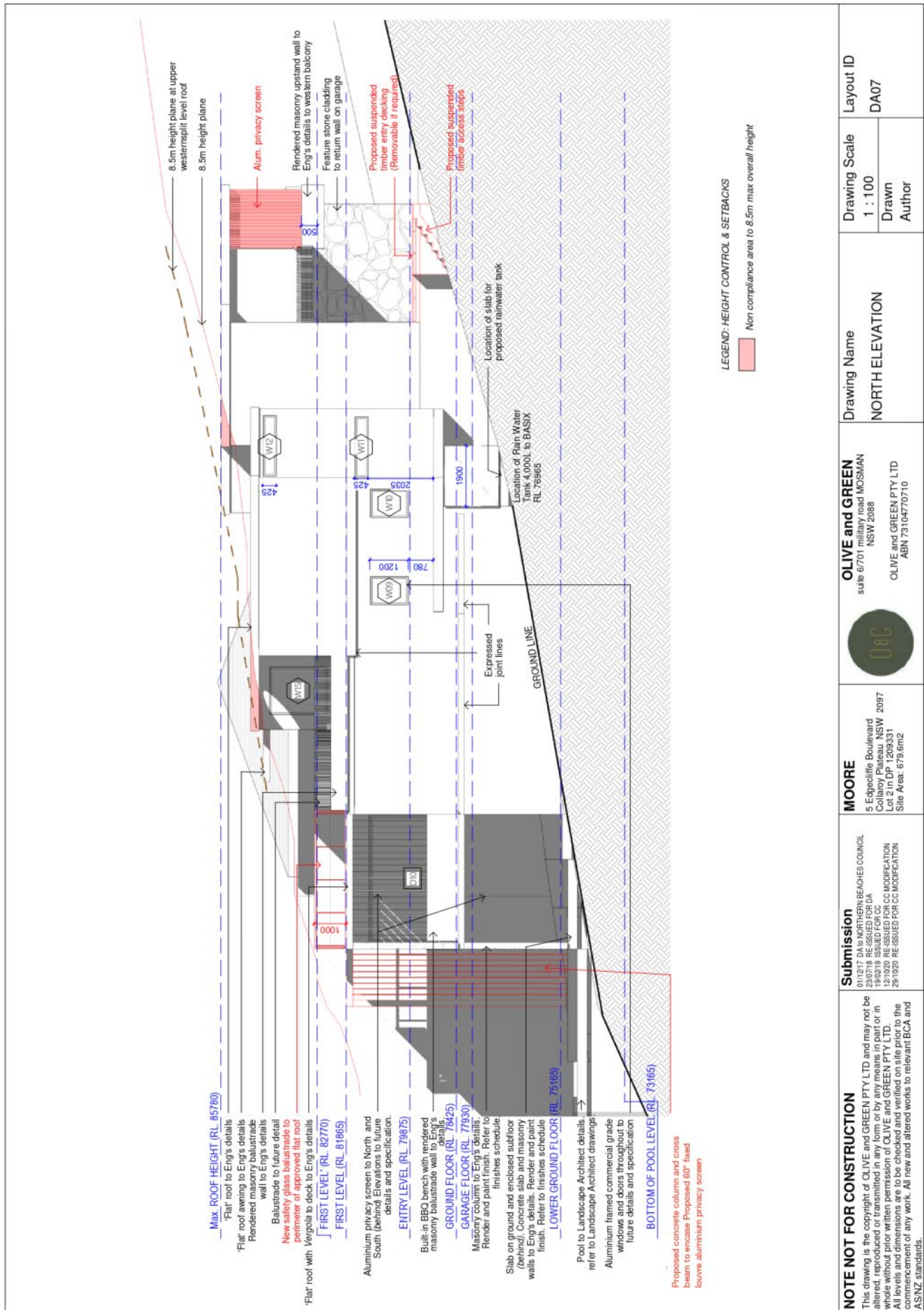
Drawing Name
WEST ELEVATION

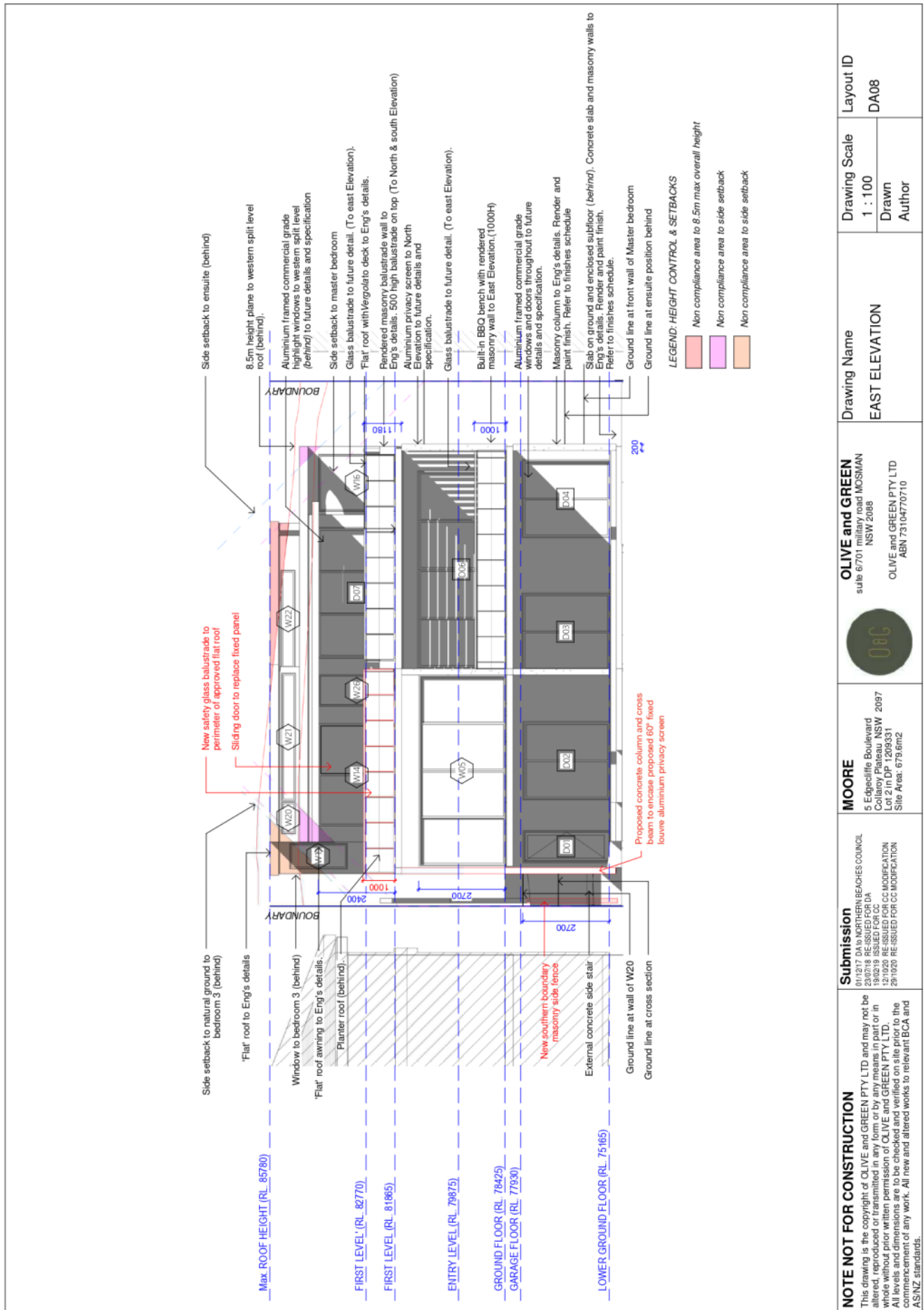
OLIVE and GREEN
suite 6/701 military road MOSMAN
NSW 2088
OLIVE and GREEN PTY LTD
ABN 73104770710



MOORE
5 Edgecliffe Boulevard
Collaroy Plateau NSW 2097
Lot 2 in DP 1209331
Site Area: 673 sm²

Submission
01/12/17 DA06 NORTHERN BEACHES COUNCIL
23/07/18 RE-ISSUED FOR DA
12/10/20 RE-ISSUED FOR CC MODIFICATION
29/10/20 RE-ISSUED FOR CC MODIFICATION







ITEM 3.4	DA2020/0920 - 10 ROCK BATH ROAD PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Lashta Haidari
TRIM FILE REF	2021/247776
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council, as the consent authority, **approves** Development Consent to DA2020/0920 for alterations and additions to a dwelling house on land at Lot 288 DP 16362, 10 Rock Bath Road PALM BEACH, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0920
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 288 DP 16362, 10 Rock Bath Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Narelle Lee Stock
Applicant:	Narelle Lee Stock

Application Lodged:	14/08/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/08/2020 to 04/09/2020
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 250,000.00
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Executive Summary

The proposed alterations and additions to the existing dwelling house includes a rear extension of the upper floor level and the infill of the undercroft area to create a basement level office space. The proposed development results in technical non-compliance with the Building Envelope control under the Pittwater 21 Development Control Plan (P21DCP) of around 69%. The proposed upper floor addition entirely breaches the building envelope requirement.

The extent of the variation raises concerns with built form and view sharing. Given that the extent of the non-compliance the proposal is inconsistent with the *Tenacity Consulting v Warringah Council [2004]* caselaw. To achieve a reasonable level of view sharing and address the built form concerns a condition of consent has been imposed to reduce the extent of the upper floor 'sunroom' extension.

The application is referred to the Development Determination Panel due to the extent of the building envelope variation in combination with the view impact.

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for the alterations and additions to the existing dwelling house. The proposed works are as follows:

- Rear extension of the upper floor level to include larger deck and enclosed sunroom
- Home office constructed below the lower ground floor level in the existing

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 - 4.3 Height of buildings
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing Pittwater
21 Development Control Plan - D12.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot 288 DP 16362 , 10 Rock Bath Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Rock Bath Road.</p> <p>The site is irregular in shape with a frontage of 18.5m along Rock Bath Road and a depth of 35.69m. The site adjoins the foreshore to the rear of the site.</p>

	<p>The site has a surveyed area of 657.6m² and a slope of 41.6% falling from the south-west to the north-east of the site.</p> <p>The site is located within the E4 Environmental Living zone and accommodates an existing two to three storey dwelling house.</p> <p>The front of the site contains a variety of low-lying vegetation within garden beds. The rear of the site is heavily vegetated with native species.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u></p> <p>Adjoining and surrounding development is characterised by similar two to three storey residential dwelling houses.</p>
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Map:



SITE HISTORY

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

- Development Application - N0320/17
Alterations and additions to dwelling, new pool and driveway. Determined 12/10/2017

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>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact</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 21/08/2020 to 04/09/2020 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 process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Lloyd Anglicas	8 Rock Bath Road PALM BEACH NSW 2108
BBF Town Planners	1 / 9 Narabang Way BELROSE NSW 2085

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

- **View loss**

Comment

A site visit at 8 Rock Bath Road was conducted to assess the potential view loss impact as a result of the development. The view loss assessment in accordance with the four step process as outlined within *Tenacity Consulting v Waringah [2004] NSWLEC 140* was carried out as detailed in the View Sharing section of this report (section C1.3). In summary, concerns were raised in regards to the extent of the building envelope variation and the view impact that arises from the variation. To ensure a reasonable level of view sharing is achieved a condition of consent has been imposed to step the rear of the proposed sunroom in by 1.5m.

- **Visual Privacy to private open space**

Comment

Concerns were raised in regards to the impact on privacy from the large window (W8) along the south-eastern elevation. A condition has been imposed to reduce the extent of the proposed sunroom. This reduction will delete the window of concern (W8). No further privacy impacts arise from the proposal.

- **Over shadowing**

Comment

The proposal will result in additional overshadowing however, the minimum solar access requirements are maintained. A reasonable level of solar access is therefore achieved.

- **Inconsistent with the zone objectives**

Comment

Dwelling houses are permitted within the zone, the proposal is consistent with the objectives of the zone. The proposal is low impact requiring minimal excavation and building within the existing footprint. The proposal complies with the front, rear, and side boundary setbacks, as well as the minimum landscaping requirement. The proposal will result in a three storey development which is consistent with adjoining and surrounding development.

- **Does not comply with the requirements for Clause 4.6**

Comment

The proposal does not trigger the requirement for a clause 4.6 assessment. The proposal meets the requirements of subclause 2D of 4.3 Height of buildings PLEP. The height of building is considered reasonable and discussed within section 4.3 of this report.

- **Inconsistent with SEPP (Coastal Management) 2018**

Comment

The proposal addresses and is consistent with all relevant sections of SEPP (Coastal Management) 2018. Further discussion is contained within this report.

- **Inconsistent with the desired future character**

Comment

The proposal is found to be inconsistent with Desired Character statement of the Palm Beach Locality in regards to being a maximum of two stories stepping down the site. However, the third storey element is consistent with the sloping topography and the surrounding residential dwelling houses. Adjoining and surrounding dwelling houses contain three storey elements. The proposed development is positioned within the existing footprint, minimising the excavation and impact on the natural environment. On balance, the proposal is considered to be consistent with the desired future character of the Palm Beach locality.

- **Proposal does not achieve the building envelope objectives of D12.8 of P21 DCP**

Comment

The proposed rear addition of the upper level is located outside the building envelope requirement. The extent of this variation results in unreasonable amenity impacts. As mentioned above, a condition has been imposed to reduce this section to the proposal. This matter is discussed in further detail in section D12.8 of this report.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application proposal is for proposed alterations and additions to the existing dwelling.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 Environmental Living zone, and in particular the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality <p>The site is located in the E4 Environmental Living Zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of existing landscape features and trees. The rear of the site adjoins Little Head Reserve and contains coastal escarpment vegetation between the existing dwelling and cliff.</p> <p>The proposed works are contained within the existing footprint, with no new landscape works are proposed, and subject to protection of the existing coastal escarpment vegetation, Landscape Referral raises no objections.</p>
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following biodiversity controls:</p> <ul style="list-style-type: none"> • Pittwater LEP Clause 7.6 (Biodiversity Protection) • Pittwater DCP Clause B4.4 (Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor) • SEPP (Coastal Management) - Coastal Environment Area <p>The proposed development is generally within the existing development footprint and is unlikely to impact upon native vegetation or wildlife habitats, subject to recommended conditions.</p> <p>Applicants should be aware that removal of native vegetation or trees without an appropriate approval or exemption is an offence under the SEPP (Vegetation in Non-rural Areas) and EP&A Act 1979.</p>
NECC (Coast and Catchments)	<p>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.</p> <p><u>Coastal Management Act 2016</u></p>

Internal Referral Body	Comments
	<p>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><u>State Environmental Planning Policy (Coastal Management) 2018</u> As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map 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, 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><u>Coastline Bluff Hazard Management</u></p> <p>The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site.</p> <p>A Geotechnical Investigation Report by White Geotechnical Group Pty. Ltd. dated 15 June 2020 assessing coastline (bluff)/ coastal cliff or slope instability has been submitted with the DA. The report assessed that the proposed development is technically complex. Small scale failures of the coastal scrap on the downhill of the slope are a potential hazard. The level of risk is 'ACCEPTABLE' provided the foundation advice is followed.</p> <p>Mass failure of the coastal scrap on the downhill side are a potential hazard. The of risk is 'ACCEPTABLE'.</p>

Internal Referral Body	Comments
	<p>The potential excavation undercutting the footings of the house is a potential hazard. The level of risk is 'UNACCEPTABLE'. To move risk to acceptable level, recommendations in section 15 must be followed.</p> <p>Inspections by Geotechnical Consultants are required.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><u>Development on Foreshore Area</u></p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>However, none of the proposed development is located on the foreshores area and hence, this clause is not applicable to this DA.</p>
NECC (Development Engineering)	<p>The submitted Geotechnical report certifies that an acceptable risk is achievable for the development.</p> <p>No objection to approval, subject to conditions.</p>
Parks, reserves, beaches, foreshore	<p>The development application proposal is for proposed alterations and additions to the existing dwelling.</p> <p>Council's Parks Referral is assessed against the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B8.2 Construction and Demolition - Erosion and Sediment Management <p>The site adjoins Little Head Reserve containing coastal escarpment vegetation located downslope. During the works surface sediment runoff and/or erosion is to be controlled, managed and contained to the immediate downslope of the works area and obstruct from entering the coastal escarpment land downslope.</p> <p>Subject to this requirement that satisfies clause B8.2, Parks Referral has no objections to the proposal, with conditions of consent to be imposed to ensure surface sediment runoff and/or erosion is controlled, managed and contained.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and

Council Policies have been considered in the merit assessment of this application.

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A382442, 07/07/2020).

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

SEPP (Infrastructure) 2007

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

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

Comment

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

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 works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed alterations and additions do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (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

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

14 Development on land within the coastal use area

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- (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 proposal does not impact upon the existing access to and along the foreshore. Access to the foreshore area from Rock Bath Road is limited due to the topography and existing vegetation. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

The foreshore area is mapped as having a high likelihood of containing Aboriginal heritage sites. No sites have been identified within the vicinity of the proposed development. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. A condition of consent has been imposed to stop works if any Aboriginal engravings or relics are unearthed.

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

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

Comment

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land 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	Complies
Height of Buildings:	10m	9.1m	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The proposed addition to the existing dwelling house has a building height of 9.1m which does not comply with the 8.5m requirement of clause 4.3 of PLEP. Subclause 2D of the of the height of building control identifies the height of buildings may exceed a height of 8.5 metres, but not be more than 10.0 metres if:

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

Comment

The variation to the 8.5m height limit is not excessive and is demonstrated in Figure 1 below. As shown, the extent of the variation is predominantly limited to the roof form.

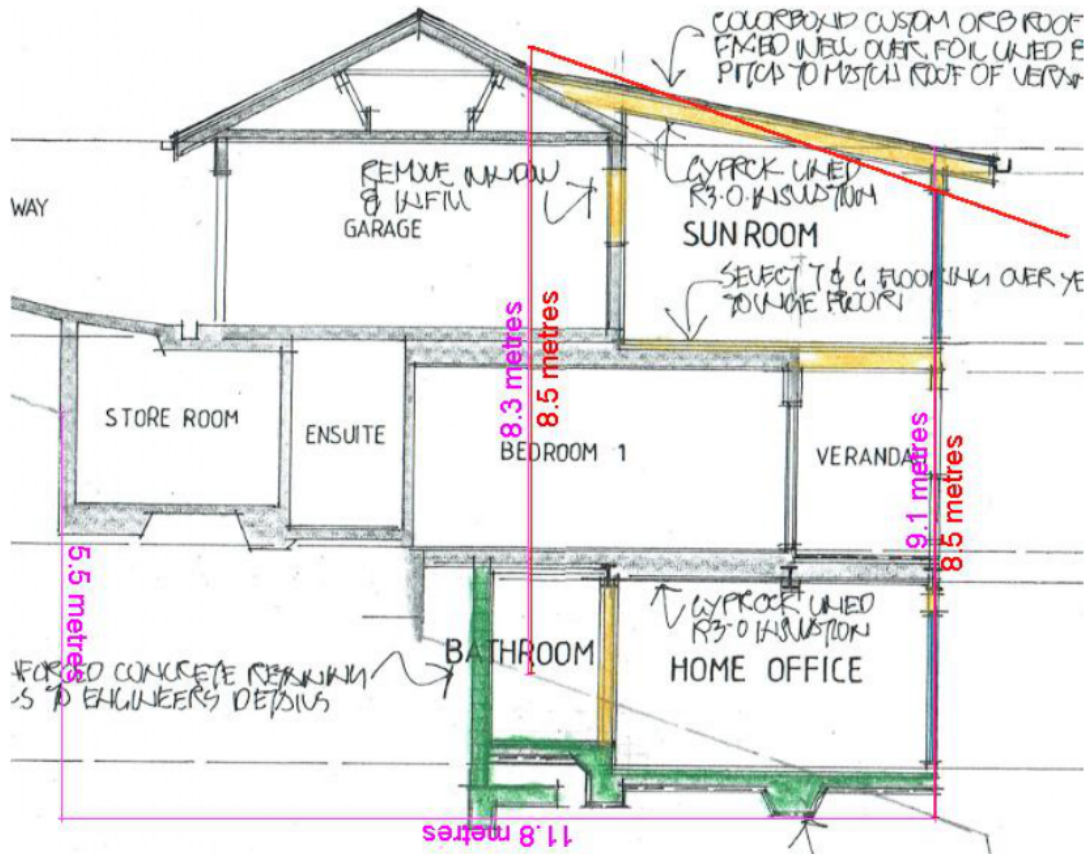


Figure 1: Height of building variation

(b) the objectives of this clause are achieved, and

Comment

The objectives of 4.3 Height of Building are achieved 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 extent of the non-compliance is limited to the roof form and does not exceed the existing ridge line. The height and scale of the dwelling is consistent with the desired character of the Palm Beach Locality. The proposal will result in a three storey element to Whale Beach Road however, given the front setback and the surrounding examples of three storey dwellings, the proposal satisfies the desired future character of the Palm Beach locality.

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

Comment

The proposed development is consistent with the height of other adjoining and nearby dwellings on sloping sites. In regards to the scale of the structure, the proposal results in a significant building envelope variation which is not consistent with surrounding and adjoining dwelling houses. To ensure building bulk is minimised, a condition of consent has been imposed to step the rear of the proposed sunroom in by 1.5m. The proposal will still result in a variation to the building envelope control however, the reduction of the sunroom will ensure the scale of the proposal is minimised to ensure a reasonable level of amenity is maintained.

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

Comment

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

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

Comment

View sharing concerns are raised and assessed against the view loss provisions under Section C1.3 View Sharing of the Pittwater 21 DCP and *Tenacity Consulting v Warringah [2004] NSWLEC 140*. In summary, the concerns were raised in regards to the extent of the building envelope variation and the view impact that arises from the variation. The above mentioned condition to reduce the proposed sunroom ensures the proposed development does not cause unreasonable view loss to and from public and private open spaces. The height of the proposal does not contribute to the extent of the impacted view and a reduction in the proposed building height would not result in an improved view sharing arrangement. A reasonable level of view sharing can be achieved subject to conditions of consent.

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

Comment

The proposed second floor addition limits the level of excavation on site, ensuring the majority of work is maintained to the existing building footprint.

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

Comment

The built form of the proposal is consistent with the existing dwelling house and does not result in further impact upon the natural environment. There are no heritage items in the vicinity of the subject site.

(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and

Comment

The building footprint is situated on a slope of 46% which exceeds the 30% requirement.

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Comment

The proposal requires a portion of cut below the existing dwelling to facilitate the home office, the level of cut is not considered excessive. The dwelling house steps down the site and the extent of the three storey element is limited to the rear of the dwelling away from the street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 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.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	N/A	N/A	Yes
Rear building line	6.5m	20.5m	N/A	Yes
Side building line	2.5m (north-west)	3.9m	N/A	Yes
	1m (south-east)	1.4m	N/A	Yes
Building envelope	3.5m (north-west)	Within envelope	N/A	Yes
	3.5m (south-east)	Outside envelope	69%	No
Landscaped area	60%	68.4%	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.1 Water Management Plan	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
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
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The development is consistent with the Desired Character statement of the Palm Beach Locality with

exception of the third storey element of the dwelling.

Specifically, the locality statement provides that the *"locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape"*.

However, the third storey element is consistent with the sloping topography and the surrounding residential dwelling houses. Adjoining and surrounding dwelling houses contain three storey elements. The proposed development is positioned within the existing footprint, minimising the excavation and impact on the natural environment.

In this regard, the built form will continue to sit comfortably with adjoining and surrounding residential development. On balance, the proposal is considered consistent with the desired future character of the Palm Beach locality.

C1.3 View Sharing

Concerns were raised in regards to the potential view loss from No. 8 Rock Bath Road. The development is considered against the underlying Outcomes of the Control as follows:

- *A reasonable sharing of views amongst dwellings.*

Comment

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1

Panoramic views from No. 8 Rock Bath Road are gained from the north-west to the south-east. The view is of water, land water interface of Palm Beach, and Barrenjoey Lighthouse. Pittwater Waterway can be seen to the north beyond Palm Beach. The existing views are predominantly unobstructed. The views of Barrenjoey Lighthouse are considered to be iconic.

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

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

Comment to Principle 2

Views at No. 8 Rock Bath Road are gained from all three levels of the dwelling house including bedrooms, kitchen and living area, and private open space. Views to the north and to the south-east are gained across the side boundaries of the adjoining properties. Figure 1 below is the

existing view from the internal principal living area on the middle level. From this space Barrenjoey Lighthouse, a portion of Palm Beach, and panoramic water views can be seen.



Figure 2: View to the north from principal living area.

3. Extent of impact

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

Comment to Principle 3

The view is primarily impacted from the internal northern window of Bedroom 1 and adjoining external balcony of Bedroom 1. The view to be impacted is as seen below in Figure 3 and Figure 4. The superimposed red line on the below Figures 3 and 4 indicate the extent of the proposed upper level sunroom.

As demonstrated within Figure 3 a large portion of Palm Beach and Pittwater Waterway beyond that will be obstructed by the proposal. In Figure 4, a much smaller portion of the land water interface will be obstructed when viewing the proposal from the rear Bedroom 1 deck.

Views of Palm Beach will be retained from the internal principal living area and the adjoining rear deck on the middle level. Views from the lower level rear deck will remain unimpacted by the proposal. Views to Barrenjoey Lighthouse will not be impacted by the proposal.



Figure 3: View to the north from upper level Bedroom 1



Figure 4: View to the north from upper level Bedroom 1 deck

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4

The proposal does not comply with the building envelope requirement along the south-eastern elevation. The proposal utilises the existing building footprint to maximise the internal living/recreational space without increasing the hardsurfaced area onsite. Through this design intent the proposed built form is pushed to its maximum and is excessive in the extent of the variation. It is noted that the site is constrained by the existing structure onsite and the topography of the area however, no attempt has been made to minimise or soften the proposed built form and the resulting amenity impact.

The impact on the available views is from the upper floor level bedroom of 8 Rock Bath Road and is considered to be a minor/moderate impact. Whilst the impact is considered to be minor/moderate an impact that results from the excessive variation of the building envelope control is considered unreasonable. To ensure a reasonable level of view sharing is achieved a condition of consent has been imposed to step the rear of the proposed sunroom in by 1.5m.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment

Views and vistas from Rock Bath Road and Whale Beach Road will not be impacted by the proposal.

- *Canopy trees take priority over views.*

Comment

No trees are proposed for removal as part of this application.

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

D12.8 Building envelope

The proposal does not comply with the building envelope requirements along the south-eastern elevation. The extent of the variation is demonstrated in Figure 5 below:

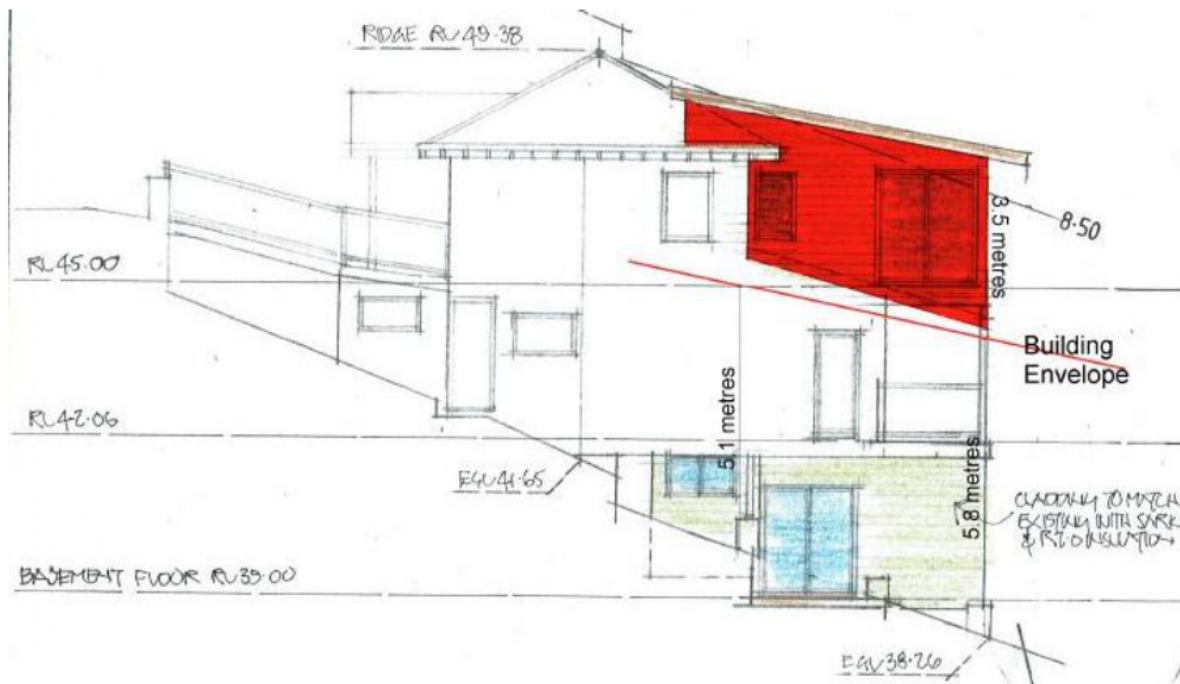


Figure 5: Building envelope variation

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

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

Comment

The proposed works represent development typical of a low-density residential area and is considered consistent with the future character of the Locality.

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

Comment

The proposal does not seek to increase the height of the structure beyond the existing RL of 49.38. The excavation below the existing structure to facilitate the third floor level will not impact upon the existing streetscape and ensures that the dwelling house sits below the canopy of surrounding canopy trees.

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

Comment

The site is able to maintain areas of substantial vegetation on the site resulting in minimal impact to the existing streetscape. The proposal appropriately relates to the characteristics of the existing dwelling, surrounding dwellings, and the natural environment.

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

Comment

The proposal utilises the existing building footprint to maximise the internal living/recreational space without increasing the hardsurfaced area onsite. Through this design intent the proposed built form is pushed to its maximum and is excessive in the extent of the variation. It is noted that the site is constrained by the existing structure onsite and the topography of the area however, no attempt has been made to minimise or soften the proposed built form. To ensure building bulk is minimised a condition of consent has been imposed to step the rear of the proposed sunroom in by 1.5m. Stepping in the rear of the proposed sunroom will provide for greater articulation in the design and step the dwelling house up the site. The reduction of the sunroom via condition also results in an overall reduction in the building envelope variation.

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

Comment

Given consideration to the reduction of the sunroom via condition, a reasonable level of view sharing is achieved. This matter is discussed further within section C1.3 of this report.

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

Comment

A reasonable level of privacy, amenity, and solar access will be maintained by the proposal.

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

Comment

The proposal does not include the removal of any existing significant trees or vegetation.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$2,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$250,000.

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

In summary, as addressed within this assessment report, the proposed development does not comply with clause D12.8 Building Envelope of P21 DCP and the non-compliance has been assessed and considered acceptable, subject to conditions of consent, in this instance.

The proposal, subject to conditions of consent, does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the PLEP 2014 and P21 DCP. Therefore, the application is recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0920 for Alterations and additions to a dwelling house on land at Lot 288 DP 16362, 10 Rock Bath Road, PALM BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2017 - 1, 2, 3, 4, 5, and 6 - Issue B	24/04/2020	J.D. Evans and Company

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report - Ref. J2732	22/06/2020	White Geotechnical Group

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

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

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

2. Prescribed Conditions

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,500.00 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 \$250,000.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White geotechnical group dated 15th June, 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

7. **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.

8. Amendments to the approved plans

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

a) The north-eastern external wall of the sunroom on the upper floor level is to be stepped in by at least 1.5m. The 1.5m reduced portion of the sunroom (roof over the middle level rear deck) is to remain un-trafficable.

b) Window W8 is to be deleted.

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

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

9. Coastal Bluff Engineering Assessment Implementation

The advice and recommendations contained in the approved Geotechnical Investigations Report prepared by White Geotechnical Group Pty. Ltd. dated 15 June 2020 in support of the development application must be incorporated as required into construction plans and structural specifications for the development.

A meeting between Geotechnical consultant and Structural Engineer is a must before any engineering design commences.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

10. Coastal Bluff Engineering Assessment Implementation

All development or activities must be designed and constructed such that they will not increase the level of risk from coastal processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect coastal processes; they will not be adversely affected by coastal processes.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

11. Engineers Certification of Plans

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

A meeting between Geotechnical consultant and Structural Engineer is a must before any engineering design commences.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. Installation and Maintenance of Sediment and Erosion Control

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

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. 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.

15. Tree and vegetation protection

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

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

b) Tree protection shall be undertaken as follows:

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

16. 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.

17. 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.

18. Geotechnical Issues

Following construction activities provide Council with a geotechnical report that has investigated the stability of the site and provided an assessment of any new landslip hazards prior to the issue of an occupation certificate.

Reason: To ensure works are undertaken in an appropriate manner.

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

19. No Planting Environmental Weeds

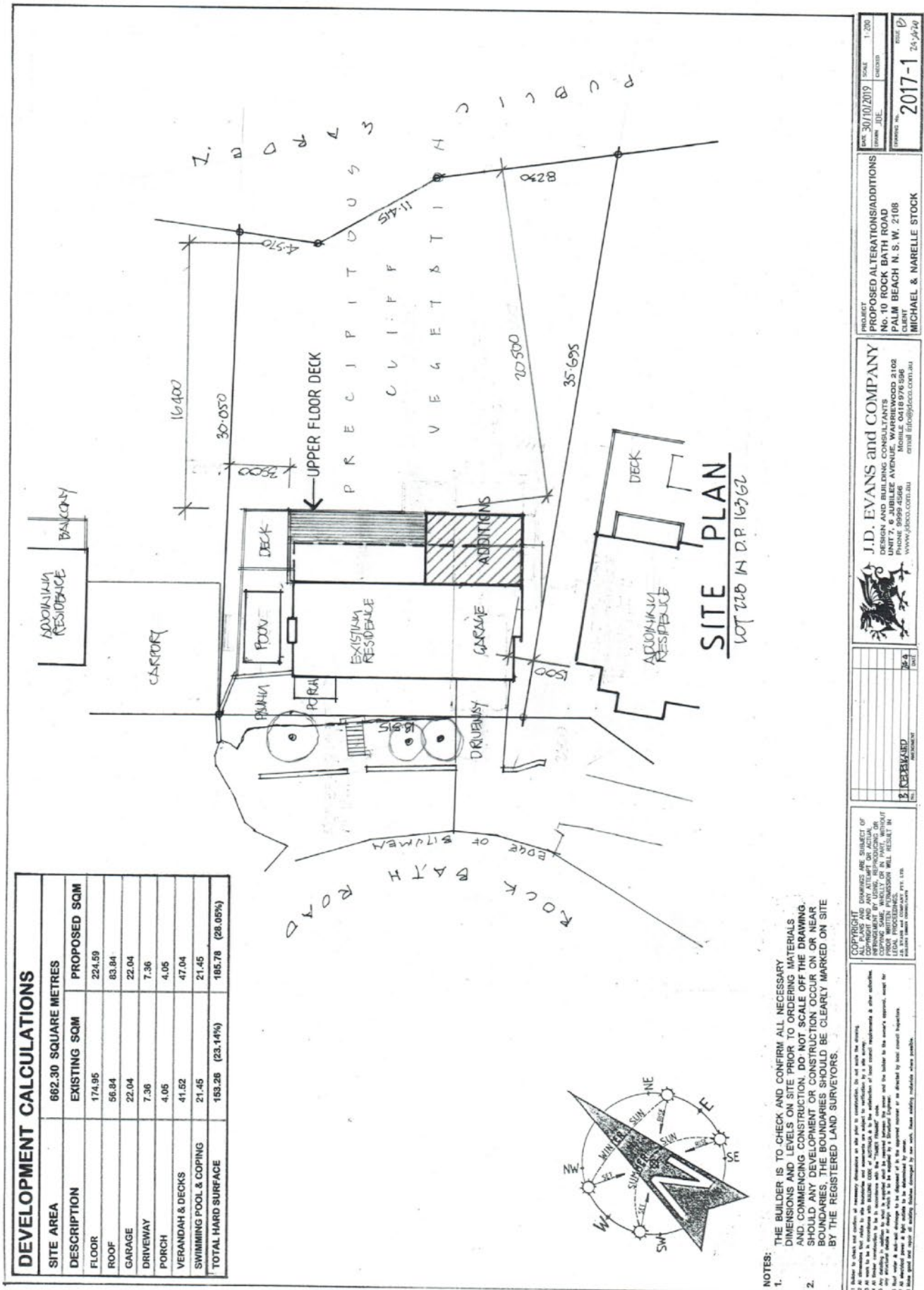
No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

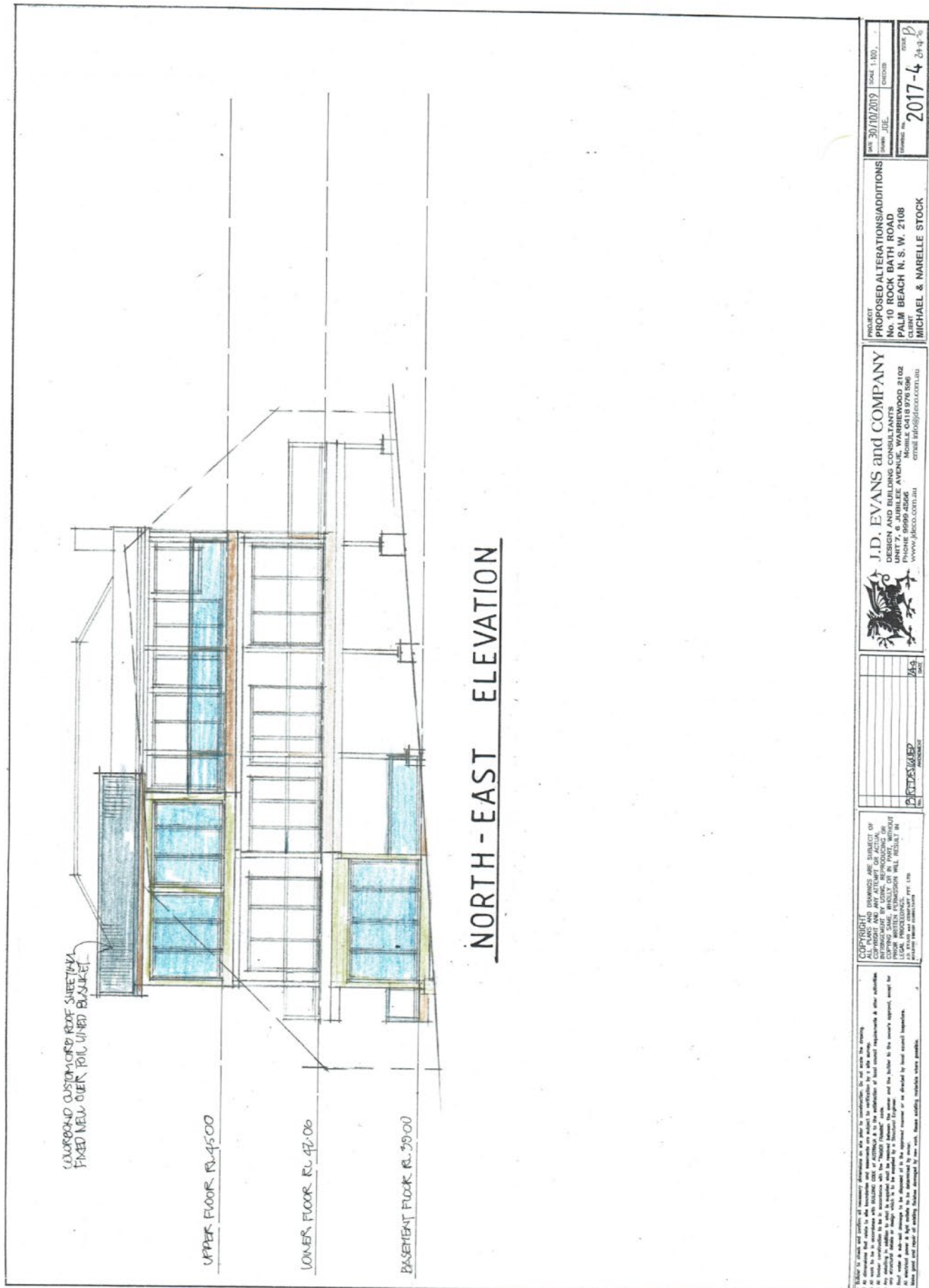
Reason: Weed management.

20. Dead or Injured Wildlife

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

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







ITEM 3.5

**MOD2020/0655 - 195 SYDNEY ROAD FAIRLIGHT -
MODIFICATION OF DEVELOPMENT CONSENT DA2018/1708
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION
OF A BOARDING HOUSE**

REPORTING MANAGER **Rod Piggott**

TRIM FILE REF **2021/247811**

ATTACHMENTS

1 Assessment Report

2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council, as the consent authority, **approves** Mod2020/0655 for Modification of Development Consent DA2018/1708 granted for demolition works and construction of a boarding house on land at Lot 87 DP 1729 & Lot 2 DP 589654, 195 Sydney Road, Fairlight, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0655
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 2 DP 589654, 197 Sydney Road FAIRLIGHT NSW 2094 Lot 87 DP 1729, 195 Sydney Road FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2018/1708 granted for demolition works and construction of a boarding 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:	Kevin Bruce Andrews Michael Ben Vance Kelly Maree Vance Joan Lynette Andrews
Applicant:	Micronest Pty Ltd

Application Lodged:	07/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	18/12/2020 to 30/01/2021
Advertised:	18/12/2020
Submissions Received:	10
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

This assessment report is submitted to the Development Determination Panel for the consideration of Modification Application No. Mod2020/0655, which seeks approval to amend Development Consent No. DA2018/1708 that approved the demolition and construction of a 75-room boarding house.

The application is being referred to the Development Determination Panel under the discretionary provisions of the Executive Manager, as the original development application constituted regionally significant development under Schedule 7 of the *State Environmental Planning Policy (State and Regional Development) 2011*. In addition, the original development was considered contentious with

250 objections and was determined by the Sydney North Planning Panel. Notwithstanding, under Section 4.55 of the Environmental Planning and Assessment Act, 1979 the proposed modification is considered to be of a minimal environmental impact.

The subject site is zoned R1 General Residential Zone.

The proposed modifications largely represent amendments to reflect conditions of consent, which have no implications to the development as approved in terms of any further increases in bulk, scale or streetscape modifications. These changes have been discussed in detail under the 'Detailed Description of Development' section of this report.

The proposal was notified and ten (10) submissions were received. Nine (9) of the submissions were not supportive of the proposed development generally due to bulk and scale, amenity impacts, traffic congestion and social concerns.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves modifications of Development Consent DA2018/1708 granted by the Sydney North Planning Panel (SNPP) for demolition works and the construction of a 75-room boarding house with basement car parking. The proposed modifications include:

Level 0

- Floor level lowered by 30mm,
- Alterations to the bin area and reception, including the removal of the café,
- Changes to landscaping layout within front setback to reflect the removal of the café,
- Reallocation of accessible car space to Level 2,
- Additional facilities including main switch room, toilet facilities and parcel lockers,
- Reconfiguration of bicycle parking.

Level 1

- Increase floor area of communal area from 75sqm to 78.2sqm (3.2sqm increase), through the removal of one (1) motor cycle space,
- Reconfiguration of fire stair,
- Reconfiguration of car parking area, including the addition of one (1) accessible car space.

Level 2

- Internal alteration to room layouts
- Reconfiguration of fire stair,
- Reorganisation of plant room to provide additional communal facilities and a common laundry room (55.4sqm).

Level 3

- Internal alteration to room layouts

- Reconfiguration of fire stair,
- Extend northern building's courtyard 1.3m westward.

Level 4

- Internal alteration to room layouts
- Reconfiguration of fire stair,
- Extend northern building's approved balconies,
- Installation of solar panels on northern roof element.

Level 5

- Internal alteration to room layouts
- Reconfiguration of fire stair,
- Installation of solar panels.

Roof

- Removal of skylights on part of the northern building,
- Installation of solar panels.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	<p>Lot 2 DP 589654 , 197 Sydney Road FAIRLIGHT NSW 2094</p> <p>Lot 87 DP 1729 , 195 Sydney Road FAIRLIGHT NSW 2094</p>
Detailed Site Description:	<p>The subject site consists of two allotments on the southern side of Sydney Road in Fairlight.</p> <p>The site is irregular in shape with a frontage of 27.16m along Sydney Road and a varying depth of between 66.83m and 78.94m. The site has a surveyed area of 1,789m².</p> <p>The site falls approximately 12 metres from the rear boundary (south) to the street (north). The subject site sits on a rock shelf traversing the site east to west.</p> <p>The site is located within the R1 General Residential Zone under Manly Local Environmental Plan 2013.</p> <p>The subject site currently contains two dwelling houses in landscaped settings. Surrounding development is characterised by a mix of dwelling houses, multi dwelling housing, and residential flat buildings. To the north are single dwelling houses and multi dwelling housing. To the south is a group of three multi-storey residential flat buildings. To the east and west are single dwellings and residential flat buildings. The Fairlight local centre is located approximately 265 metres to the east of the subject site.</p>

Map:



SITE HISTORY

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

- DA0020/2017 (at 195 Sydney Road, Fairlight) for demolition and construction of multi-dwelling housing was approved under delegation on 6 July 2017.
- DA2018/1708 (at 195 & 197 Sydney Road, Fairlight) for demolition and construction of a boarding house was approved by the SNPP on 27 June 2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1708, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The modifications largely represent amendments to reflect conditions of consent, which have no implications to the development as approved in terms of any further increases in bulk, scale or streetscape modifications; • As above, the proposal is remaining consistent with the approved built form, with minor changes to the basement, internal room layouts and communal areas, • The proposed modifications result in additional landscaped areas through the removal of the Café • The modifications do not result in any

Section 4.55(1A) - Other Modifications	Comments
	adverse neighbouring impacts.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1708 for the following reasons:</p> <ul style="list-style-type: none"> • The proposed modification does not change the approved use, • The approved density remains unchanged, • The approved built form has not been significantly altered, • The proposed modifications are of a minimal environmental impact.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 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.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April

Section 4.15 'Matters for Consideration'	Comments
	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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to additional stormwater and waste details.</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>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>
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</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/12/2020 to 30/01/2021 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 10 submission/s from:

Name:	Address:
Mrs Carla Danelle Stafford	83 Balgowlah Road FAIRLIGHT NSW 2094
Ms Alex Stewart	5 / 199 Sydney Road FAIRLIGHT NSW 2094
Mr Noel Gerard McNamara	5 Brisbane Street FAIRLIGHT NSW 2094
Magdy Noussair	138 Sydney Road FAIRLIGHT NSW 2094
Ms Cheryl Josephine Smith	50 Rosedale Avenue FAIRLIGHT NSW 2094
Mr Peter John Stephenson	5 / 174 - 176 Sydney Road FAIRLIGHT NSW 2094
Mrs Anne Springfield	182 Sydney Road FAIRLIGHT NSW 2094
Mr David Springfield	1/182 Sydney Road FAIRLIGHT NSW 2094
Ronan Lonsdale Lancaster	1 Bellevue Street FAIRLIGHT NSW 2094
Mrs Virginia Lynette Stokes	12 Brisbane Street FAIRLIGHT NSW 2094

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

- **Parking,**
- **Visual impact,**
- **Social impacts,**
- **Character,**
- **Excavation impacts,**

- **Stormwater,**
- **Neighbourhood amenity,**
- **Overdevelopment,**
- **Management of the boarding house.**

The matters raised within the submissions are addressed as follows:

- **Parking:** Concern has been raised amongst the submissions that the proposal does not provide sufficient onsite parking, therefore will affect existing on-street parking. Submissions also raised concern that the proposed development will result in traffic congestion and pedestrian safety concerns.

Comment:

The proposed modifications will not alter the approved parking provisions and will retain compliance with SEPP ARH 2009 and MDCP 2013 parking requirements. Minor modifications to the parking layout are proposed to improve internal accessibility, which have been reviewed and supported by Council's Traffic Engineers.

This matter does not warrant the refusal of this application.

- **Visual impact:** Concern has been raised within the received submissions that the proposed modification will result in an unreasonable visual impact.

Comment:

The modifications largely represent amendments to reflect conditions of consent, which have no implications to the development as approved in terms of any further increases in bulk, scale or streetscape impacts. Further, the proposed modifications result in additional landscaped areas within the front setback through the removal of the Café. In addition, the proposal was reviewed by Council's Urban Design division, who raised no objections to the proposal.

This matter does not warrant the refusal of this application.

- **Social Impacts:** Concern was raised that proposed modification will be responsible for decreased property value, increased crime, decreased safety and unreasonable noise.

Comment:

No evidence has been provided to substantiate claims relating to the devaluation of property prices, which is not a consideration under the EP&A Act, nor behavioural issues of boarding house residents. In addition, the proposal has included a letter of certification (White Noise Acoustics, 17 November 2020) ensuring that the original acoustic assessment completed by Wood and Grieve Engineers (195-197 Sydney Road, Fairlight – Acoustic Report, dated 31 August 2018) includes suitable acoustic investigations for the proposed modification.

This matter does not warrant the refusal of this application.

- **Character:** Concern was raised within the submissions that the proposed development is out of character with the locality.

Comment:

As above the proposed modifications are largely internal and will have a minimal impact upon the development's presentation to the street. Further, the additional landscaping within the front setback will soften the built form when viewed from the street. In addition, the proposed modifications were found to be substantially the same development as approved under DA2018/1708.

This matter does not warrant the refusal of this application.

- **Excavation impacts:** Submissions raised concern that the proposed development relies on excessive excavation on the site, which contains sandstone.

Comment:

The proposal involves minor excavations to the basement level, lowering the floor level by 30mm (RL 47.40). The proposal has included a new Geotechnical Report prepared by JK Geotechnics dated 29 January 2021, which details the site's subsurface condition and demonstrates that the proposed excavation is acceptable, subject to adherence to recommendations made in the report. Furthermore, the modification was reviewed by Council's Development Engineer, who raised no objections to the proposal in relation to earthworks

This matter does not warrant the refusal of this application.

- **Stormwater:** Submissions raised concern that the proposed development will result in unreasonable stormwater impacts.

Comment:

Council's Development Engineer is generally supportive (subject to conditions) of the proposal in relation to stormwater management and onsite detention.

- **Neighbourhood amenity:** Submissions raised concern that the ongoing operation of the proposed development would result in visual privacy impacts, light spill, and overshadowing.

Comment:

The matters of visual privacy, light spill, and overshadowing were deemed acceptable within the original assessment of DA2018/1708. The proposed modification does not involve any significant changes to approved built form with the majority of the changes contained within the approved footprint. Furthermore, the proposal was reviewed by Council's Urban Design division, who raised no objections to the proposal.

This matter does not warrant the refusal of this application.

- **Overdevelopment:** Submissions raised concern that the proposal presented overcrowding of the site, given the proposed number of residents and their visitors.

Comment:

As above, the proposed modification is retaining compliance with the approved built form and does not seek to increase the approved density.

This matter does not warrant the refusal of this application.

- **Management of the boarding house:** Concern is raised with the ongoing maintenance of the boarding house.

Comment:

The Plan of Management associated with the original consent (DA2018/1708) remains applicable to the current application, as the proposed modification is not altering the approved density and parking provision.

This matter does not warrant the refusal of this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate stage.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Previous consent issued for boarding house at 197 Sydney Road FAIRLIGHT NSW 2094 (DA 2018/1708).</p> <p>Modification seeks design refinements to reflect Conditions 12 and 22 within the consent for DA 2018/1708.</p> <p>Previous plans for the DA had a café on Level 0 within the reception/café.</p> <p>Condition 22 of the consent stated the following:</p> <p><i>22. Deletion of Cafe</i> <i>Plans and documentation are to be amended to delete reference to the proposed cafe. Details demonstrating compliance with this condition are to be provided to the satisfaction of the</i> <i>Certifying Authority prior to the issue of the Construction Certificate.</i></p> <p><i>Reason: To delete prohibited development.</i></p> <p>Environmental Health are satisfied that the SEE and plans provided</p>

Internal Referral Body	Comments
	<p>for the Modification reflect Condition 22 of the Consent.</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
Landscape Officer	<p>The modification application includes design refinements and reflects Council's conditions of consent under DA2018/1708, and in terms of this Landscape Referral, amendments to the frontage following the removal of the cafe and additional fire stairs. As a result of this modification, additional landscape area is provided.</p> <p>The additional landscape area including terrace walling is noted within the frontage as shown on the Section 4.55 landscape documents L000, L100, L101, L102, L103, and L104, all issue C, as prepared by Sydney Design Collective. The Section 4.55 landscape documents indicate mass planting to the front setback, and as with the development application documents, amended landscape plans shall be provided prior to the issue of a Construction Certificate and detail design is to be approved to satisfy the requirements of Landscape Plans as outlined in Council's DA Lodgement requirements.</p> <p>Condition 17 of DA2018/1708 shall be amended under the modification application. DA2018/1708 conditions 18, 41, and 57 remain unchanged.</p>
NECC (Development Engineering)	<p>3rd Engineering referral The pit has been relocated outside the HWT +CW room. Development Engineering has no objection to the modification. The condition 8 of the original consent shall be amended to update the plan details.</p> <p>2nd Engineering referral A new set of the stormwater has been submitted. The applicant proposed a stormwater pit within HWT + CW room. It should be relocated. The condition 8 of the original consent shall be amended in below:</p> <p>1st Development Engineering referral The applicant proposed a new access path and new landscape on the western side of the property. The proposed path and landscape area is located to the approved osd tank location. And the proposed finished level of the OSD is RL47.75 which is 600 mm higher the new path at the western side in this modification.</p> <p>Furthermore, the applicant proposed to lower the basement with 200mm. At least one cross section of the driveway must be provided to demonstrate the accessibility of the basement.</p>

Internal Referral Body	Comments
	As such, Development Engineer cannot support the application due to the insufficient details of the design and plan.
Strategic and Place Planning (Urban Design)	<p>The application is a modification (MOD2020/0655) of DA 2019/1708 for a part three storey/part four storey boarding house comprising 75 boarding rooms as approved by the Sydney North Planning Panel on 27 June 2019.</p> <p>The modifications represent amendments to reflect conditions of consent, conditions that have no urban design implications to the development as approved in terms of any further increases in bulk, scale or streetscape modifications; removal of cafe and addition of 72sqm of communal space, the majority of built form changes being internal resulting in no additional overshadowing or privacy impacts on neighbouring properties.</p> <p>Therefore it is assessed that the proposal is substantially the same development.</p>
Traffic Engineer	<p>In accordance to the Statement of Environmental Effects report, the proposal include the following transport related amendments:</p> <p>level 00:</p> <ul style="list-style-type: none"> - Relocation of one accessible parking space to Level 1 - Floor level lowered 30mm - Reconfiguration of bicycle parking <p>Level 01:</p> <ul style="list-style-type: none"> - Reconfiguration of car parking area to provide improved accessibility including the inclusion of accessible car space at Level 01. <p>The proposed amendments are reviewed and no concern is raised on transport grounds.</p>
Waste Officer	Proposal approved with conditions.
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 (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 3: Boarding houses

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

*"(a) is wholly or partly let in lodgings, and
(b) provides lodgers with a principal place of residence for 3 months or more, and
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division 'communal living room' means "a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or	Consistent The subject site is located within the R1 General Residential and, as such, the proposed use is permissible with consent under MLEP 2013.

(g) Zone B4 Mixed Use.	
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Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
<p>(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.</p> <p>Note: Accessible area means land that is within:</p> <p>(c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p>	<p>Consistent</p> <p>The site is located within the R1 General Residential zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.</p>
<p>(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.</p>	<p>Not applicable.</p> <p>The site is located within the Sydney region.</p>

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as development which may be carried out with consent.

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
<p>(1) Density and scale</p> <p>A consent authority must not refuse consent to development to which this Division applies on</p>	<p>(a) the existing maximum floor space ratio for any form of residential accommodation</p>	<p>A floor space ratio of 0.6:1 applies to this site under Clause 4.4 Floor Space Ratio of the MLEP 2013. The subject</p>	<p>Compliant</p>

the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	permitted on the land, or (b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	site is located within the R1 General Residential zone, which permits residential flat buildings with consent. The subject site is not heritage listed, nor does a heritage order apply on site. As such, the subject site is eligible for an additional 0.5:1 floor space ratio. The maximum floor space ratio on site becomes 1.1:1 (1967.9sqm). The proposed modification has a floor space ratio of 1.093:1 (1956sqm).	
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus: (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.		
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The maximum height of building applying to the site under Clause 4.3 Height of Buildings of the MLEP 2013 is 8.5m. The maximum height proposed is 8.5m.	Compliant
(b) landscaped area	if the landscape treatment of the front setback area is	The proposed modification involves the removal of the cafe and	Compliant

	compatible with the streetscape in which the building is located,	the addition of landscaped areas within the front setback. These changes are in response to conditions of consent and have been assessed by Council's Landscaping and Urban Design divisions. The outcomes of both assessments were supportive raising no issues with the landscape treatment within the front setback. Overall, the Sydney Road streetscape includes development in landscaped settings and the proposed development is consistent with this existing landscaped setting.	
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	The proposed development includes three communal living rooms. Each living room receives at least three hours of direct sunlight between 9am and 3pm in midwinter.	Compliant
(d) private open space	<p>if at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of 2.5m is provided</p>	<p>(i) The proposed development includes a courtyard of over 200sqm with a minimum dimension of 8.8m for use of the lodgers.</p> <p>(ii) The proposed development includes a boarding house manager. The boarding house manager's room includes private open space of 9.0sqm with dimensions of greater than 2.5m accessible from the living area of the room.</p>	Compliant

	adjacent to that accommodation,		
(e) parking	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>	The approved parking provision remains unchanged under this modification.	Compliant
(f) accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be</p>	The proposed development includes single and double rooms of at least 16 square metres (and up to 23 square metres), excluding private bathroom and kitchen facilities.	Compliant

	used by a single lodger, or (ii) 16 square metres in any other case.		
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	The proposed development includes private bathroom and kitchen facilities in each room.	Compliant
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	The proposed development complies with the standards set out in subclauses (1) and (2).	Compliant

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	The proposed development includes 75 rooms including one managers room. The proposal includes four communal rooms.	Compliant
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	The proposed development includes rooms to a maximum area of 23sqm (excluding private bathroom and kitchen facilities).	Compliant
(c) no boarding room will be occupied by more than 2 adult lodgers,	The maximum number of lodgers in each room is two.	Compliant
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Each room contains private bathroom and kitchen facilities.	Compliant
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The proposed development includes 75 rooms for up to 126 residents. A room for the manager is included on site.	Compliant

(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	Not applicable. The subject site is zoned R1 General Residential.	Not applicable
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	The proposed development includes 75 rooms, requiring 15 bicycle and 15 motorcycle spaces. The proposed development provides 15 bicycle and 15 motorcycle spaces.	Compliant.
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	Subclause (1) applies as the proposal is for the construction of a boarding house.	Applicable

Clause 30: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

Comment:

The proposed modification involves minimal changes to the approved built form, as the changes are largely internal. In this regard, it is considered that the scale of the development is compatible with the streetscape and consistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment:

As above, the proposed modification is consistent with the approved built form, such that the development remains reasonably articulated through sufficient breaks between buildings and is broken

down by generous landscaping. In this regard, the development is considered to be compatible with the scale of surrounding development and consistent with the second principle.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment:

The Sydney Road streetscape is characterised by landscaped front setbacks and natural features (rock outcrops). The proposed landscape treatment of the front setback area is compatible within the Sydney Road streetscape in that it includes articulated sandstone walls, and sufficient planting in the front setback commensurate to its scale and form. In this regard, it is considered that effective methods have been employed in the design of the development to reduce its visual dominance in terms of the topography and the proposed development is consistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

The existing streetscape along Sydney Road includes a mix of building materials and finishes, including sandstone, cladding, brick, rendering and timber. The proposed development includes a mix of materials and finishes, including sandstone, timber, glazing, louvres, metals, and concrete (perforated and smooth). These materials form a modern architectural style, while providing consistency with existing materials and finishes within the streetscapes. In this regard, the development is considered to be consistent with the fourth principle.

The above principles were further developed in *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The proposed modification retains compliance with the approved side and rear setbacks.

Privacy

The proposal remains acceptable in relation to privacy as it is consistent with the requirements of Clause 3.4.2 Privacy and Security of the MDCP 2013, and provides adequate side setbacks (including a landscaping), privacy screening to key openings and balconies, and ground levels commensurate to adjacent properties.

Overshadowing

The proposed modification will not result in any additional overshadowing.

Noise

The approved development is supported by an Acoustic Report, demonstrating that the proposal does not result in unreasonable acoustic impacts. In addition, the proposal has included a letter of certification (White Noise Acoustics, 17 November 2020) ensuring that the acoustic assessment completed by Wood and Grieve Engineers including the 195-197 Sydney Road, Fairlight – Acoustic Report, dated 31 August 2018 includes suitable acoustic investigations for the proposed modification.

Conclusion to Character Assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is compatible with the character of the local area and surrounding wider locality.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 968134M_02 dated 06 November 2020). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	25	44

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	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	8.5m	N/A	Yes
Floor Space Ratio	1.1:1 (0.6:1 under MLEP 2013 plus 0.5:1 under SEPP ARH) (1967.9qm)	1.064:1 (1,903sqm)	FSR: 1.093:1 (1956sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
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

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1,789sqm	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	West: 7.6m (based on gradient 1:5.5)	9.1m	No change	N/A
	East: 7.5m (based on gradient 1:6)	8.4m	No change	N/A
4.1.2.2 Number of Storeys	2	6 (including up to 3 basement storeys)	No change	N/A
4.1.2.3 Roof Height	Height: 2.5m	Flat	No change	N/A
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0-5.4m, consistent with prevailing setback	3.0m-5.4m, consistent with prevailing setback	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	West: 3.03m (based on wall height)	3.32m	No change	N/A
	East: 2.8m (based on wall height)	3.3m	No change	N/A

	Windows: 3m	Min. 3m	No change	N/A
4.1.4.4 Rear Setbacks	8m	5.7m	No change	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total open space: Min. 55% of site area (983.95sqm)	63.73% (1,140.3sqm)	No change	N/A
	Open space above ground: Max. 40% of total open space (649.32sqm)	33.3% (542sqm)	No change	N/A
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of total open space (568.15sqm)	43.2% (492.4sqm)	43.9% (500.3sqm)	Yes
	3 native trees	>3 trees	> 3 trees	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.8m (<50% frontage)	No change	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 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
3.6 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.9 Boarding Houses	Yes	Yes
4.4.9.1 Communal Rooms and Areas	Yes	Yes
4.4.9.2 Bedrooms	Yes	Yes
4.4.9.3 Open Space	Yes	Yes
Schedule 7 – Part A – Boarding Houses	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.

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

The approved development involves the demolition and construction of a 75-room boarding house.

The current application Mod2020/0655 seeks approval to amend Development Consent No. DA2018/1708. The proposed modifications largely represent amendments to reflect conditions of consent, which have no implications to the development as approved in terms of any further increases in bulk, scale or streetscape modifications.

The proposal was advertised and ten (10) submissions were received, nine (9) of which were unsupportive, however they do not warrant the refusal of this modification.

Overall, it is considered that the modification is reasonable and satisfactory on its merits.

Accordingly, the application is recommended for approval subject to the modified 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. Mod2020/0655 for Modification of Development Consent DA2018/1708 granted for demolition works and construction of a boarding house on land at Lot 2 DP 589654, 197 Sydney Road, FAIRLIGHT, Lot 87 DP 1729, 195 Sydney Road, FAIRLIGHT, 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
A00.01[A] Site Plan	19 November 2020	Mostaghim
A01.00[C] Level 0 Plan	18 February 2021	Mostaghim
A01.01[B] Level 1 Plan	02 February 2021	Mostaghim
A01.02[A] Level 2 Plan	19 November 2020	Mostaghim
A01.03[B] Level 3 Plan	02 February 2021	Mostaghim
A01.04[A] Level 4 Plan	19 November 2020	Mostaghim
A01.05[A] Level 5 Plan	19 November 2020	Mostaghim

A01.06[A] Roof Plan	19 November 2020	Mostaghim
A02.01[A] Typical Unit Plans	19 November 2020	Mostaghim
A03.01[B] North & South Elevations	02 February 2021	Mostaghim
A03.02[B] East & West Elevations	02 February 2021	Mostaghim
A04.01[B] Sections AA+BB	02 February 2021	Mostaghim
A04.02[B] Sections CC+DD	02 February 2021	Mostaghim
A08.01[A] Demolition Plan	25 November 2020	Mostaghim
A08.02[A] Excavation Plan	25 November 2020	Mostaghim

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BCA Assessment Report	15 November 2020	Steve Watson & Partners
Access Report	13 November 2020	Access-i
Traffic Parking Statement	19 November 2020	PDC Consultants

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L000(C) Cover Sheet	16 December 2020	Sydney Design Collective
L100(C) Ground Floor & Level 1	16 December 2020	Sydney Design Collective
L101(C) Level 2	16 December 2020	Sydney Design Collective
L102(C) Level 3	16 December 2020	Sydney Design Collective
L103(C) Level 4	16 December 2020	Sydney Design Collective
L104(C) Level 5 & Roof	16 December 2020	Sydney Design Collective

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

B. Delete Condition 12, Bin Room and Path, which reads as follows:

The bin room is to be able to accommodate 13 x 660L bins with 1000mm aisle width between each rows. The bins must not be stacked as shown in the plan. A separate and unobstructed pedestrian path must be constructed to allow Council and its agents safe passage and unrestricted access to and from the bin room.

Reason: To ensure all bins can be adequately stored in a dedicated room away from public view and easily accessible by the occupants and Council and its agents.

C. Delete Condition 22, Deletion of Cafe, which reads as follows:

Plans and documentation are to be amended to delete reference to the proposed cafe. Details demonstrating compliance with this condition are to be provided to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To delete prohibited development.

D. Modify Condition 08, On-site Stormwater Detention, to read as follows:

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and generally in accordance with the concept drainage plans prepared by Integrated Group Service, project Number EN-N18_89, drawing number SW101- SW400, dated 09/03/2021 and Rev 05. Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer in the related field.

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

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

E. Modify Condition 17, Amended Landscape Plans, to read as follows:

Amended Landscape Plans, shall be amended by the modification application to read as follows:

Amended Landscape Plans shall be submitted to the Certifying Authority and to the Council for approval indicating the following alterations on the submitted Landscape Plans:

- a) Generally, landscape plans are to be documented to satisfy the DA Lodgement requirements.
- b) Along the side boundary setback, the landscape plans shall be amended as follows:
 - i) the side boundary paths are to be aligned against the building, with the maximum 1200mm width,
 - ii) continuous deep planters to approximately 1 metre depth are to be provided to support small tree planting growth, with tree planting to be generally set 3 metres apart, except where change in levels require planter walling stepping. For such situations tree planting shall be set 2 metres from the step down wall (ie. 4 metres apart),
 - iii) a minimum internal planter walling width of 1.4 metres is to be provided to provide sufficient soil area and soil volume,
 - iv) tree planting species shall achieve a height of 6 metres at maturity, with trees selected for their dense canopy, including *Elaeocarpus*, *Syzygium*, *Acmena*, *Banksia*, and *Glochidion*,
 - v) all tree planting is to be installed at 100 litre container size,
 - vi) all tree planting shall comply with 3.3.1 Landscaping Design, section b) item iii) where trees should be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight as described in the clause, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views,
 - vii) side boundary planters shall include only tree and groundcovers to ensure soil volume availability is maximised for tree root growth,
 - viii) dripline irrigation is to be provided to the planters for planting establishment and to control root distribution.
- c) The Level 01 podium fronting Sydney Road shall be landscaped as follows:
 - i) deep soil planters approximately 1 metre depth, are to provide landscaping across the frontage to accommodate small tree planting to achieve 5-6 metres at maturity and inclusive of understorey planting,
 - ii) at least 5 small trees shall be provided,
 - iii) all tree planting is to be installed at 100 litre container size,
 - iv) all tree planting shall comply with 3.3.1 Landscaping Design, section b) item iii) where trees should be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight as described in the clause, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views,

- v) planter widths shall be a minimum of 1.4 metres,
- vi) dripline irrigation is to be provided to the planters for planting establishment and to control root distribution.
- d) The front setback shall be landscaped to support tree canopy planting and mixed understorey planting.
- i) at least 4 small trees shall be provided, equally spaced along the landscape area, installed at 100 litre container size,
- ii) all mixed understorey planting shall be planted at minimum 900mm centres for shrubs and 500mm centres for all other groundcovers and accent planting, and shrub planting shall be installed at a minimum 200mm container size.
- e) Street tree planting, replacing the existing poor specimen, shall be provided in accordance with the Manly Council Street Tree Masterplan 2015, consisting of:
 - i) 1 x Buckinghamiana celsissima, planted at 200 litre container size,
 - ii) tree pit excavation 1m x 1m x 700mm depth, excavated to loosen all compacted sides of the tree pit, and backfilled with sandy loam soil mix,
 - iii) surface finish consisting of dark gray coloured porous paving,
 - iv) timber tree guard 1m x 1m square, with 50x50x1800 posts and 30x70 top and mid rail,
 - v) all street tree works are subject to Council inspections and approvals,
 - vi) a 12 month establishment period shall apply for the street tree planting works. Any tree failure is to be replaced within this period.

Reason: To provide consistency with the landscape character of the local area.

F. Add Condition 12, Building Code of Australia Upgrade requirements and Fire Safety Upgrade, to read as follows:

The Building Code of Australia works as detailed and recommended in the Building Code of Australia Assessment Report prepared by Steve Watson & Partners, dated November 2020, Report Ref No. 2020/1802/R1.0 are to be taken into consideration as part of the assessment of the Construction Certificate.

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

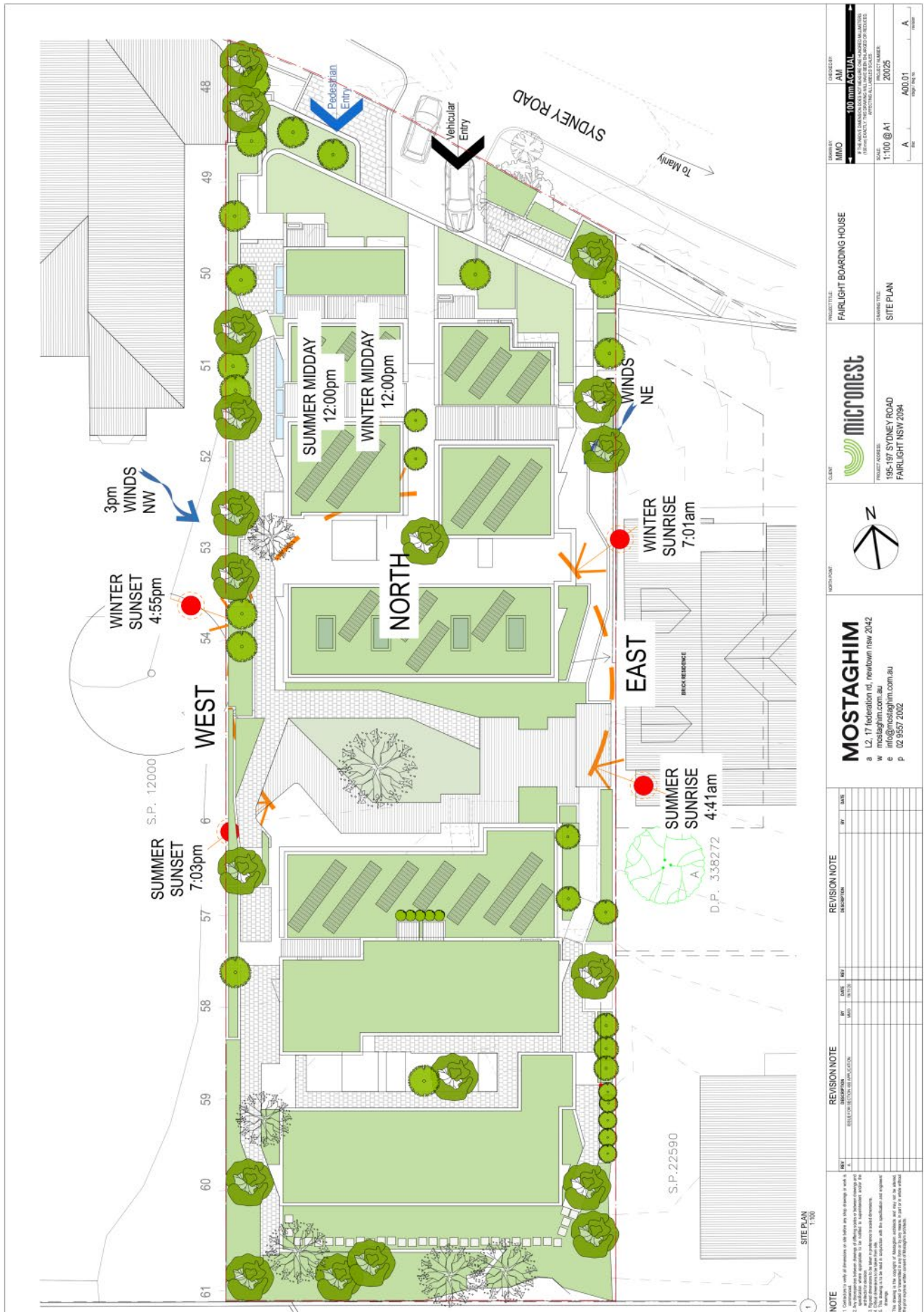
Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

G. Add Condition 22, Access and Facilities for People with Disabilities, to read as follows:

Access and facilities to and within the building is to be provided for Persons with a Disability in accordance with the Access Report prepared by Access-i, dated 26/11/2020, reference no. 20281, the Building Code of Australia and AS 14281.

Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.







ITEM 3.6	DA2020/1693 - 1094 BARRENJOEY ROAD PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING
REPORTING MANAGER	Lashta Haidari
TRIM FILE REF	2021/247886
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 DA2020/1693 for Alterations and additions to a dwelling on land at Lot Y DP 367375, 1094 Barrenjoey Road, Palm Beach, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1693
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Responsible Officer:	Gareth David
Land to be developed (Address):	Lot Y DP 367375, 1094 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling
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:	Louise Margaret Jacobs Kenneth Edwin Jacobs
Applicant:	Louise Margaret Jacobs Kenneth Edwin Jacobs

Application Lodged:	29/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/01/2021 to 28/01/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 141.17%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,071,754.00
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EXECUTIVE SUMMARY

The proposal involves alterations and additions to an existing dwelling house.

The application includes a request under Clause 4.6 of the Pittwater LEP 2014 to vary the development standard for height. As the application proposes a variation to the height development standard of more than 10% and involves a Class 1 Dwelling, the application is referred to the Development Determination Panel.

One submission has been received from one (1) adjoining property. This submission raised concerns particularly relating to height, bulk and scale, overdevelopment, character, privacy, view loss and

amenity impacts. The assessment of the scheme reveals the residents issues do not warrant the refusal or further amendment of the application.

The application has been assessed against the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, relevant Environmental Planning Instruments (EPIs) and Council policies. The proposed Clause 4.6 variation to Building Height under the Pittwater LEP 2014 and the variations to the Built Form controls under the Pittwater 21 DCP are supported for the reasons discussed in detail in the report.

A search of Council's records has revealed that no development consent has been received for the use of the roof top terrace, rooftop canopy and associated lift access and lift lobby enclosure of the existing dwelling. Therefore, a condition has been imposed of the conditions of consent ensuring that all proposed works on the Level 3 (Roof Terrace) be deleted from the plan. As such this resort does not assess the proposed works to Level 3 (Roof Terrace).

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal is a suitable and appropriate development for the subject site, for the reasons outlined in this report.

Accordingly, it is recommended that the application be approved subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes demolition works and alterations and additions to the existing dwelling house as follows:

Garage/Entry Level

- New garage doors & new glazing to the current entry foyer
- New stonework to be provided over existing concrete driveway

Garage Roof Terrace

- New planters and landscape features together with new paved surface finish
- Minor modifications to the emergency access door to the lift shaft

Proposed New Undercroft Level

- Construction of a new undercroft level to provide for two bedrooms, both with small ensuite, new living room and wet bar, new balcony, and lift access with internal stair access to level above

Level 1

- Relocation of external glazing line to align with the existing concrete column line
- Internal reconfiguration of the room layout to provide for a main and second bedroom, both with dressing rooms and en-suites
- New laundry and internal stair access to levels above and below and lift access
- New balustrade and planter to the perimeter of the external terrace
- New swimming pool fencing

Level 2

- Relocation of external glazing line to align with the existing concrete column line
- Internal reconfiguration to provide for an open plan kitchen, living, family and dining area and WC
- New balustrade and planter to the perimeter of the external terrace

Level 3 (Roof top terrace)

- Demolition works
- New light well
- New low level garden planters, seating and resurfacing of the floor slab finish including removal of artificial turf and provision of select tiles and garden features including sitting area, firepit & bird bath
- New balustrade and planter to the perimeter of the external terrace
- Removal of existing roof cover and replacement extended with steel frame roof with colour bond roof sheet finish. The overall height of the roof will be reduced from RL 30.28 to between RL 30.22 & RL 30.00.

***Note:** the proposed works to Level 3 (Roof Terrace) are unable to be approved in its current form due to its reliance on unapproved usage, structures and access (see below) . Hence, a condition is to be imposed on any consent ensuring that all proposed works on the Level 3 (Roof Terrace) be deleted from the plan. As such this resort will not assess the proposed works to Level 3 (Roof Terrace).

Site works

- Associated landscaping
- Widening of existing driveway crossover

*Unauthorised works

A search of Council's records has revealed that no development consent has been received for the use of the roof top terrace, rooftop canopy and associated lift access and lift lobby enclosure. A Building Information Certificate (BC104/11) was granted in 2011 for these roof top terrace works, however, in accordance with Division 6.7 of the EP&A Act, a Building Information Certificate operates to for a period of 7 years from the date of issue of the certificate. Hence, this Building Information Certificate (BC104/11) is no longer in force.

Development Applications are unable to retrospectively authorise such works. Given that these works (including access and use of the roof) do not have formal consent, the proposed works to Level 3 (Roof Terrace) are unable to be approved in its current form due to its reliance on unapproved usage, structures and access. Hence, a condition is to be imposed on any consent ensuring that all proposed works on the Level 3 (Roof Terrace) be deleted from the plan. As such this resort will not assess the proposed works to Level 3 (Roof Terrace).

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 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D12.13 Construction, Retaining walls, terracing and undercroft areas
Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot Y DP 367375 , 1094 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Barrenjoey Road.</p> <p>The site is regular in shape with a frontage of 40.235m along Barrenjoey Road and a depth of 18.29m. The site has a surveyed area of 735.8m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a elevated single dwelling supported on concrete columns, currently with two levels of residential accommodation and a roof top terrace and swimming pool. The site has car parking at the existing ground floor level,</p>

with driveway access and turning within the site available Barrenjoey Road. Access to the dwelling is provided via external stairs and a vertical passenger lift, and as a result of the elevated concrete support columns, the dwelling has been positioned to be above the predominant tree line, resulting in a landmark building within the Palm Beach locality.

Given the significant rise in levels towards the east as a result of the escarpment to the rear, the site has a rise in levels from west to east of approximately 20.0m.

The site contains multiple trees, primarily along the front boundary. The site also contains introduced palm species under the existing dwelling. The site is located on a steep escarpment and contains rock outcrops to the rear.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one, two and three storey dwellings, medium density development and small-scale commercial development. Pittwater waterway is located to the west of the site.

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:

- **360/1094-G** - Development consent granted by Land and Environment Court for two storey dwelling - 1984

- **BC104/11** - Building Certificate for a roof top canopy, a new lift lobby enclosure at roof level, a new lift car and minor repairs and alterations to lift shaft door openings and access stairway - Granted 01/11/2011
- **PLM2020/0222** - Pre-lodgement meeting for alteration and additions to a dwelling house - Meeting held 24/09/2020

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
	<p>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> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Scott

Jarvis of Sydney Bushfire Consultants, dated 02 December 2020) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/01/2021 to 28/01/2021 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 1 submission/s from:

Name:	Address:
Mrs Elaine Lee Diamond	1123 Barrenjoey Road PALM BEACH NSW 2108

The matters raised within the submissions are addressed as follows:

- **Height and inadequate Clause 4.6 assessment**

Comment:

An assessment of the submitted clause 4.6 variation request has been undertaken within the relevant section of this report. The assessment finds the applicant's written request adequately demonstrates that it is unreasonable to apply strict compliance and that there are sufficient environmental planning grounds to justify contravening the development standard. It is considered that the proposal is consistent with the aims and objectives of the E4 Environmental Living zone and the Height of Buildings development standard under Pittwater LEP 2014.

- **Bulk, scale, overdevelopment and adverse impacts to the Palm Beach Locality.**

Comment:

Concerns have been raised that the proposal is an overdevelopment of the site which will dominate the streetscape be out of character with the Palm Beach locality.

These issues have been addressed throughout the report. In summary, the proposed works would not increase the overall height or substantially alter the bulk and scale of the current building, given the recessed design of the proposed undercroft level. The inclusion of the new undercroft level would assist further "ground" the building by reducing the height of the existing undercroft. Furthermore, the proposal would be located entirely within the existing building footprint, require minimal site disturbance, would not result in the loss of any substantial trees or vegetation and would retain screen planting along the front and side boundaries. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. The proposal is of a suitable design when considering the site constraints and the existing built form of the site.

- **Insufficient documentation**

Comment:

Concern has been raised that the submitted Statement of Environmental Effects has not sufficiently considered the impacts of the proposal on privacy or views.

It is considered that the submitted Statement of Environmental Effects has sufficiently addressed these issues and this does not warrant a refusal of the application.

- **Visual privacy**

Comment:

The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Section C1.5 Visual Privacy of the P21 DCP. In summary, the proposal results in reasonable levels of privacy to adjoining properties.

- **View loss**

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section C1.3 View Sharing of the P21 DCP. In summary, The proposal would not result in an increase of the overall height of the building and the majority of the works would be below the existing building. Furthermore, the properties to the east of the dwelling are significantly higher than the existing dwelling and the proposal is not expected to impact existing view corridors.

- **Concern the height variation would require the need for the application to be determined by a Local Planning Panel**

Comment:

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). The application has been referred to Council's Development Determination Panel for determination.

- **The increase of glazing would result reflectivity issues and amenity impacts**

Comment:

Concern has been raised by a neighbour to the west of the site (No.1123 Barrenjoey Road) in relation to reflectivity issues associated with an increase in glazed area proposed as part of the proposal. Whilst it is noted that the proposal would result in an increase in glazed area, this is not uncommon for properties with waterfront views within the locality. The objector who has raised this concern (No.1123 Barrenjoey Road) would be located substantially lower than the proposed development, would be separated by the proposal by more than 50.0m (from their dwelling and principal living area). Furthermore, given the water views to the west, it is expected that the primary orientation of surrounding properties are to the west (rather than the east where the dwelling is situated). Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in softening the appearance of the dwelling when viewed from private and public domain and the waterway.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development proposal is for alterations and additions to an

Internal Referral Body	Comments
	<p>existing dwelling.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality <p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, and the provision of 60% landscaped area.</p> <p>The site contains existing native trees throughout the property, as well as other planting and contains natural landscape features such as rock ledges. Existing Exempt Species palms are proposed for removal and these do not require Council consent for removal.</p> <p>A Landscape Plan is provided with the application and includes landscape treatments that, with the retention of the existing native trees within the site, satisfies the intent of clause E4 zone Environmental Living and clause C1.1 Landscaping.</p> <p>Landscape Referral raise no objections.</p>
NECC (Bushland and Biodiversity)	<p>Councils biodiversity referrals team have assessed this development application for compliance with the following relevant provisions:</p> <ul style="list-style-type: none"> • Coastal Management SEPP (2018) Clause 13 Development on land within the coastal environment area • Pittwater LEP Clause 7.6 Biodiversity Protection • Pittwater 21 DCP Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor <p>Two (2) trees have been identified within the Architectural Plans (Andrew Nolan Architects 2020) that will require removal as a result of the proposed development. As the majority of significant trees and vegetation within the property are proposed for retention, the removal of these trees will not result in a significant onsite loss of canopy cover or net loss in native canopy trees. Two (2) replacement canopy trees are to be planted within the site to compensate for the loss of the removal of the two (2) trees and should be incorporated into an amended landscape plan.</p> <p>The submitted Landscape Plan (Andrew Nolan Architects 2020) is to be revised to ensure that at least 60% of proposed landscaping incorporates native species selected from the Native Plant Species Guide - Pittwater Ward, which is available on Councils website. This is to ensure compliance against P21DCP cl. B4.4, which stipulates that</p>

Internal Referral Body	Comments																											
	<p>development shall ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in Native Plant Species Guide - Pittwater Ward available on the Council website). Landscaping is to be outside areas of existing bushland and should not include environmental weeds.</p> <p>On internal review, Councils biodiversity referrals team are satisfied that the proposed development complies with the relevant provisions listed above, subject to these consent conditions.</p>																											
NECC (Coast and Catchments)	<p>The proposal is supported for approval without condition.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report, the DA satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p>																											
NECC (Development Engineering)	No objections to approval subject to conditions as recommended.																											
Road Reserve	No impact on existing road assets. Minor changes to driveway crossing to be conditioned by Development Engineering.																											
Strategic and Place Planning (Heritage Officer)	<table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3">The subject site is not a heritage item or located within proximity to an item. However the proposal was referred to Heritage as the existing dwelling was noted as being a local landmark building in the area.</td></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><td colspan="3">As the subject site is not a heritage item there is no inventory. However the existing dwelling is a three level dwelling constructed on concrete columns set high above the level of Barrenjoey Road. Above the columns are three semicircular concrete disc set into the cliff face behind. These discs form the roof and floors of the dwelling. At the base of the columns there is a garage and entrance to the lift.</td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage</td><td>No</td><td></td></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			The subject site is not a heritage item or located within proximity to an item. However the proposal was referred to Heritage as the existing dwelling was noted as being a local landmark building in the area.			Details of heritage items affected			As the subject site is not a heritage item there is no inventory. However the existing dwelling is a three level dwelling constructed on concrete columns set high above the level of Barrenjoey Road. Above the columns are three semicircular concrete disc set into the cliff face behind. These discs form the roof and floors of the dwelling. At the base of the columns there is a garage and entrance to the lift.			Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage	No	
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Australian Heritage Register	No																											
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Internal Referral Body	Comments
	Register
	National Trust of Aust (NSW) Register No
	RAIA Register of 20th Century Buildings of Significance No
	Other N/A
	Consideration of Application
	The proposal seeks consent for alterations and additions to the existing dwelling including a new undercroft level added to the underside of the lowest concrete disc. As the property is not a heritage item, Heritage raises no objections to the proposal but recommends a photographic archival recording of the property to capture it in its current state and configuration given its local landmark status.
	Therefore Heritage raises no objections and requires one condition.
	Consider against the provisions of CL5.10 of PLEP.
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No
	Further Comments
	COMPLETED BY: Brendan Gavin, Principal Planner DATE: 10 February 2021

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.
Aboriginal Land Council	

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.A400533_03 dated 08 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 raised not objection to the proposal subject to recommended conditions. These conditions will be included within any consent.

Roads and Maritime Service (RMS)

Clause 101 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
- (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

The proposed development, includes amendments to the existing driveway and crossover onto Barrenjoey Road, being a classified road. As such, the development was referred to TfNSW for comments and/or recommendations. TfNSW have determined the works to be acceptable, subject to recommended conditions.

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 works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed works would not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (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:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

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 tunnelling or unreasonable impact on the loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The 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 to the aforementioned cultural and environmental aspects.

Although it is recognised that the bulk and scale of the building is generally disproportionate to surrounding residential dwellings, given context of the existing site and building, the proposal is considered acceptable in this instance.

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

A condition of consent has been placed to stop works and report the findings to the AHO if any Aboriginal Engravings or Relics are unearthed.

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

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

Comment:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land 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	20.5m	141.17%	No

***Note:** The maximum height of the proposed development has been measured at 24.3m which represents a variation of up to 185.88%. However, as discussed earlier within this report, a search of Council's records revealed that no development consent has been received for the use of the roof top terrace, rooftop canopy and associated lift access and lift lobby enclosure. Given that these works (including access and use of the roof) do not have formal consent, a condition is to be imposed on any consent ensuring that all proposed works on the Level 3 (Roof Terrace) be deleted from the plan. Therefore, taking into consideration the condition to delete all works on the Level 3 (Roof Terrace), the maximum height for this proposal would be 20.5m which represents a variation of up to 141.17%. As such this assessment will be based on a maximum height of 20.5m and will not take into consideration the proposed works on Level 3 (Roof Terrace).

Compliance Assessment

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

Clause	Compliance with Requirements
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Clause 4.3 (2) stipulates that height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

The maximum height of the proposed development has been measured at 24.3m which represents a variation of up to 185.88%. However, as discussed earlier within this report, a search of Council's records revealed that no development consent has been received for the use of the roof top terrace, rooftop canopy and associated lift access and lift lobby enclosure. Given that these works (including access and use of the roof) do not have formal consent, a condition is to be imposed on any consent ensuring that all proposed works on the Level 3 (Roof Terrace) be deleted from the plans.

Therefore, taking into consideration the condition to delete all works on the Level 3 (Roof Terrace), the maximum height for this proposal would be 20.5m which represents a variation of up to 141.17%.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	20.5m
Percentage variation to requirement:	141.17%

***Note:** The maximum height of the proposed development has been measured at 24.3m which represents a variation of up to 185.88%. However, as discussed earlier within this report, a search of Council's records revealed that no development consent has been received for the use of the roof top terrace, rooftop canopy and associated lift access and lift lobby enclosure. Given that these works (including access and use of the roof) do not have formal consent, a condition is to be imposed on any consent ensuring that all proposed works on the Level 3 (Roof Terrace) be deleted from the plan. Therefore, taking into consideration the condition to delete all works on the Level 3 (Roof Terrace), the maximum height for this proposal would be 20.5m which represents a variation of up to 141.17%. As such this Clause 4.6 Assessment will be based on a maximum height of 20.5m and will not take into consideration the proposed works on Level 3 (Roof Terrace).

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 (summarised):

- *The breach of the maximum building height is a consequence of the substantial slope of the site and the location and unique form of the existing development;*
- *The proposed additions will maintain the general bulk and scale of the existing development and maintain an architectural consistency with the form of the current dwelling which promotes the orderly & economic use of the land;*
- *The proposed additions to the dwelling are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area.*
- *The proposal is low impact and will not see any further significant site disturbance, and maintain and enhance the existing soft landscaped area.*
- *The proposal improves the residential amenity of the buildings' occupants and maintains the*

amenity of neighbours in terms of views by locating the new floor area level, where it will not unreasonably obstruct views across the site and will maintain the views from the site and will not increase the overall height of the building.

- *The proposed works seek to provide modest changes to the existing built form, which through the inclusion of the new undercroft level will assist in lowering the apparent height of the building.*

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:

This matter has been discussed within section A4.12 of this report. The subject dwelling is unique in its design in that it is located on concrete columns, elevated substantially higher than surrounding dwellings. This is due to the location of the dwelling adjacent to the escarpment located along the rear. The dwelling is located at an elevated level above Barrenjoey Road and is visible from Barrenjoey Road, the surrounding locality and from Pittwater. The subject site is heavily constrained by the slope of the site and the built form of the existing dwelling.

In summary, it is considered the proposal would achieve the desired future character of the locality as the proposed works would not increase the overall height or substantially alter the bulk and scale of the current building and the proposal would be confined to the footprint of the existing building. Furthermore, the proposal would require minimal site disturbance, would not result in the loss of any substantial trees or vegetation and would retain screen planting along the front and side boundaries. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway.

The proposal is of a suitable design when considering the site constraints and the existing built form of the site. On the balance, it is considered that the development achieves the desired future character of the Palm Beach Locality

The development satisfies this objective.

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

Comment:

As above, the subject dwelling is unique in its design in that it is located on concrete columns, elevated substantially higher than surrounding dwellings. In this regard, it is difficult to consider the building to be compatible with the height and scale of surrounding and nearby development. However, the proposed works would not increase the overall height or substantially alter the bulk and scale of the current building, given the recessed design of the proposed undercroft level. The inclusion of the new undercroft level would assist further "ground" the building by reducing the height of the existing undercroft.

Other development in the locality which is similarly located mid slope along the escarpment line, and in particular to the north opposite Palm Beach ferry wharf, does have a similar general height above the road level.

The inclusion and retention of lower storey planting to partially screened the lower levels, and a façade with open balustrading and planters to be included at each level would assist in reducing the visual bulk of the development. The proposed additions to the dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing and not would obscure any important landscape and townscape features.

The development satisfies this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The breach in height of the proposal is not considered to result in unreasonable overshadowing impact to adjoining neighbours.

The development satisfies this objective.

d) to allow for the reasonable sharing of views,

Comment:

Given the elevation of the proposal and its location in respect to surrounding dwellings, the proposal is unlikely to result in unreasonable view impacts. The proposal would not result in an increase of the overall height of the building and the majority of the works would be below the existing building. Furthermore, the properties to the east of the dwelling are significantly higher than the existing dwelling and the proposal is not expected to impact existing view corridors.

The development satisfies this objective.

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

Comment:

The variation to the height control occurs as a result of the siting of the existing dwelling in conjunction with the sloping topography of the site. The subject dwelling is unique in its design in that it is located on concrete columns, elevated substantially higher than surrounding dwellings. The development proposes no significant excavation or earthworks to facilitate additional floor area and the proposed works would be contained to the footprint of the existing building. The proposed works would not increase the overall height or substantially alter the bulk and scale of the current building, given the recessed design of the proposed undercroft level. The inclusion of the new undercroft level would assist further "ground" the building by reducing the height of the existing undercroft area. The proposal is of a suitable design when considering the site constraints, topography and the existing built form of the site.

The development satisfies this objective.

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

Comment:

The proposal would require minimal site disturbance, would not result in the loss of any substantial trees or vegetation and would retain screen planting along the front and side boundaries. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. Substantial canopy tree cover would be retained to the rear (above) the site which would retain the appearance of the building within and below surrounding natural environment. The site does not join any sites of heritage.

The development satisfies this objective.

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 works do not include any significant excavation or site disturbance to facilitate additional floor area and the proposed additions is to be largely sited within the existing building footprint. The

proposal will not require the removal of any significant vegetation. The proposal respects the scale and form and relative height of the existing building. The external form of the development will be enhanced through the visual softening introduced by the landscaping and open style balustrades.

The development satisfies this objective.

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

Comment:

The proposal is low impact and will not see any further significant site disturbance, and maintain and enhance the existing soft landscaped area.

The development satisfies this objective.

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

Comment:

The development proposes no significant excavation or earthworks to facilitate additional floor area and the proposed works would be contained to the footprint of the existing building. The proposed works would not increase the overall height or substantially alter the bulk and scale of the current building, given the recessed design of the proposed undercroft level. The inclusion of the new undercroft level would assist further "ground" the building by reducing the height of the existing undercroft area. The proposal would maintain the concrete grey colour finish which would match the existing built form. Planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. This will also assist in integrating the building with the surrounding bushland setting and landform. The proposal will not require the removal of any significant vegetation and proposes additional landscaping and screen planting to minimise bulk and scale and facilitate integration with the landform.

The development satisfies this objective.

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

Comment:

The proposal will not impact upon riparian or foreshore vegetation or wildlife corridors. The additions are largely sited within the existing building footprint.

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).

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) the consent authority is satisfied that:

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and

significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	10.0m	4.3m	57%	No
Rear building line	6.5m	1.7m	73.85%	No (as existing)
Side building line	2.5m (N)	5.4m	N/A	Yes
	1m (S)	4.2m	N/A	Yes
Building envelope	3.5m (N)	Outside envelope	N/A	No
	3.5m (S)	Outside envelope	N/A	No
Landscaped area	60% (441.48sqm)	34.9% (256.8sqm)	41.9%	No (as existing)

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	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
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The desired character of the Palm Beach locality is prescribed, as follows:

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape....

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards...

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the

natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors...

The development proposes alterations and additions to provide for a new undercroft level and alterations to the facade of the existing building. This would result in the appearance of of a 3-4 storey building where the locality calls for two-storey development.

However, the subject dwelling is unique in its design in that it is located on concrete columns, elevated substantially higher than surrounding dwellings. This is due to the location of the dwelling adjacent to the escarpment located along the rear. The dwelling is located at an elevated level above Barrenjoey Road and is visible from Barrenjoey Road, the surrounding locality and from Pittwater. The subject site is heavily constrained by the slope of the site and the built form of the existing dwelling.

The proposed works would not increase the overall height or substantially alter the bulk and scale of the current building, given the recessed design of the proposed undercroft level. The inclusion of the new undercroft level would assist further "ground" the building by reducing the height of the existing undercroft. Furthermore, the proposal would require minimal site disturbance, would not result in the loss of any substantial trees or vegetation and would retain screen planting along the front and side boundaries. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway

The proposal is of a suitable design when considering the site constraints and the existing built form of the site. On the balance, it is considered that the development achieves the desired future character of the Palm Beach Locality

C1.3 View Sharing

Given the elevation of the proposal and its location in respect to surrounding dwellings, the proposal is unlikely to result in unreasonable view impacts. The proposal would not result in an increase of the overall height of the building and the majority of the works would be below the existing building. Furthermore, the properties to the east of the dwelling are significantly higher than the existing dwelling and the proposal is not expected to impact existing view corridors. Figures 1 illustrates the difference in the elevation between the subject site and the properties to the east. Figure 2 depicts the view from Level 3 (roof) looking east.

A submission was raised in relation to view loss by a neighbour to the west (No.1123 Barrenjoey Road). This neighbour would be located substantially lower than the proposed development and would maintain water views to the west. No view loss submissions have been received by the adjoining neighbours to the east.



Figure 1 - Contour map of the subject site and the properties to the east.

Figure 2 - View from Level 3 (roof) looking east.

C1.5 Visual Privacy

Given the elevation and spatial separation of the proposal from adjoining properties the proposal is unlikely to result in unreasonable privacy impacts. Additionally, screen planting is retained along the northern boundary which will assist in mitigating potential privacy impacts associated with the development.

Concern has been raised by a neighbour to the west of the site (No.1123 Barrenjoey Road) in relation to visual privacy. Clause C1.5 (Visual Privacy) requires that private open space and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres. The proposed development would be in excess of 20.0m from the front boundary of this neighbour and more than 50.0m from their dwelling. It is considered that this level of spatial

separation would ensure the maintenance of acceptable visual privacy in this instance.

C1.14 Separately Accessible Structures

Pittwater 21 DCP stipulates within Clause C1.14 that separately accessible structures may be permitted provided that it is not designed for separate habitation. The proposed undercroft level addition, would be separately accessible to the main dwelling and consists of habitable spaces i.e. two bedrooms, bathroom, living room and wet bar. Such bathroom facilities are permitted as they are ancillary to the bedrooms however the development will be conditioned over the life of the development so to ensure the addition will not be used for the purposes of separate habitation including a secondary dwelling or dual occupancy. An additional condition will be applied over the life of the development to prohibit the installation of cooking facilities.

D12.5 Front building line

Description of Non-Compliance

The minimum front building line is 10.0m for the site. The proposal involves the following working within the front setback:

- The new proposed undercroft level would measure 4.5m - 9.0m from the front boundary
- New planters and balustrading would measure a minimum distance of 4.1m from the front boundary on level 1, 2 and 3.

It should be noted that these proposed works are within the existing footprint of the building and would not result in the building being closer to the front boundary than what currently exists onsite.

Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below:

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

Comment:

This matter has been discussed within section A4.12 of this report. The subject site is heavily constrained by the slope of the site and the built form of the existing dwelling. In summary, it is considered the proposal would achieve the desired future character of the locality as the proposed works would not increase the overall height or substantially alter the bulk and scale of the current building. Furthermore, the proposal would require minimal site disturbance, would not result in the loss of any substantial trees or vegetation and would retain screen planting along the front and side boundaries. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway

The proposal is of a suitable design when considering the site constraints and the existing built form of the site.

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

Comment:

This matter has been addressed under Clause C1.3, above in this report, which has determined that the proposal will allow a reasonable sharing of views. In summary, the proportions and

location of the proposed extensions combined with the positioning of surrounding buildings results in the conclusion that the works would not unreasonably obstruct any existing provision of views from the public domain or private residences.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

The development has been designed and sited appropriately so to ensure no unreasonable amenity impacts arise for the occupants of the subject site or those of adjoining and surrounding properties.

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

Comment:

The landscape plan details new and existing trees and vegetation to assist in reducing the perceived bulk and scale of the development from the public domain and adjacent properties. Landscaping will be retained along the front of the property. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. A condition of consent is recommended for two (2) replacement canopy trees to be planted to compensate for the loss of the removal two existing trees to assist in minimising built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:

The proposed parking arrangement is not altered by the proposal. Sufficient space is retained to enable vehicle manoeuvring in a forward direction.

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

Comment:

As above, the site will retain all existing natural vegetation, with the exception of two (2) exempt tree species. A condition of consent is recommended for two (2) replacement canopy trees. Council's Bushland and Biodiversity Officer has assessed the proposal and has raised no objection subject to the condition that landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Sufficient screen planting is retained along the front and side of the property to retain the bushland character of the site.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

The subject dwelling is unique in its design in that it is located on concrete columns substantially higher than the adjoining dwellings. This is due to the location of the dwelling adjacent to the escarpment located along the rear. The dwelling is located at an elevated level above Barrenjoey Road and is visible from Barrenjoey Road, the surrounding locality and from Pittwater.

The proposed works would not increase the overall height or substantially alter the bulk and

scale of the current building. Furthermore, the proposal would require minimal site disturbance, would not result in the loss of any substantial trees or vegetation and would retain screen planting along the front and side boundaries. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. Substantial canopy tree cover would be retained to the rear (above) the site which would retain the appearance of the building within and below surrounding natural environment.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The landscape plan details new and existing trees and vegetation to assist in reducing the perceived bulk and scale of the development from the public domain and adjacent properties. Landscaping will be retained along the front of the property. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. It is considered that these works will assist in encourage attractive street frontages and improve pedestrian amenity.

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

Comment:

The siting of the proposed development is considered to be an appropriate response with respect to the spatial characteristics of the existing urban environment. The subject site is heavily constrained by the slope of the site and the built form of the existing dwelling. The works would be located entirely within the existing building footprint, would require minimal site disturbance and would not result in the loss of any substantial trees or vegetation.

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

D12.6 Side and rear building line

Description of non-compliance

Clause D12.6 of the Pittwater 21 DCP requires a rear setback of 6.5m to be provided. The proposed alterations and additions to the dwelling has a minimum setback of 1.7m representing a 73.85% variation to this requirement.

It should be noted that these proposed works are within the existing footprint of the building and would not result in the building being closer to the rear boundary than what currently exists onsite.

Merit Consideration

With regards to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

To achieve the desired future character of the Locality.

Comment:

This matter has been discussed within section A4.12 of this report. The subject site is heavily constrained by the slope of the site and the built form of the existing dwelling. In summary, it is considered the proposal would achieve the desired future character of the locality as the proposed works would not increase the overall height or substantially alter the bulk and scale of the current building. Furthermore, the proposal would require minimal site disturbance, would not result in the loss of any substantial trees or vegetation and would retain screen planting along the front and side boundaries. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway

To bulk and scale of the built form is minimised.

Comment:

The submitted landscape plan details new and existing trees and vegetation to assist in reducing the perceived bulk and scale of the development from the public domain and adjacent properties. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. Given the elevation of surrounding land, the dwelling would be substantially lower than that of the properties to the rear (east).

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

Comment:

This matter has been addressed elsewhere within the report (refer to Clause C1.3 View Sharing under P21DCP). In summary, the proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

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

Comment:

As noted above, no views are to be unreasonably compromise by the proposed works.

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

Comment:

The proposed development will not result in any unreasonable visual privacy or overshadowing impacts to neighbouring properties.

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

Comment:

The submitted landscape plan details new and existing trees and vegetation to assist in reducing the perceived bulk and scale of the development from the public domain and adjacent properties. Landscaping will be retained along the front of the property. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. A condition of consent is recommended for two (2) replacement canopy trees to be planted to compensate for the loss of the removal two existing trees to assist in minimising built form. The

application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal.

Flexibility in the siting of buildings and access.

Comment:

The proposal is of a suitable design when considering the site constraints and the existing built form and siting of the dwelling. The proposal would require minimal site disturbance and would not result in the loss of any substantial trees or vegetation.

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

Comment:

As above, the proposed development includes adequate vegetation and landscaping to soften and visually reduce the built form.

To ensure a landscape buffer between commercial and residential zones is established.

Comment:

The proposed development does not adjoin a commercial zone.

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

D12.8 Building envelope

Detailed description of non-compliance

Given the elevation of the existing dwelling and the slope of the land, the proposed alterations and additions to the dwelling would protrude beyond the building envelope prescribed by this control on the northern and southern elevation.

Clause D12.8 of P21 DCP prescribes that the prescribed building envelope may be varied when the slope of the exceeds 30%. This variation is applicable in relation to the subject site, and the proposed protrusions are supported on merit, as the proposal achieves consistency with the outcomes of the control, as follows:

Merit consideration

To achieve the desired future character of the Locality.

Comment:

This matter has been discussed within section A4.12 of this report. The subject site is heavily constrained by the slope of the site and the built form of the existing dwelling. In summary, it is

considered the proposal would achieve the desired future character of the locality as the proposed works would not increase the overall height or substantially alter the bulk and scale of the current building. Furthermore, the proposal would require minimal site disturbance, would not result in the loss of any substantial trees or vegetation and would retain screen planting along the front and side boundaries. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway

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

Comment:

The subject dwelling is unique in its design in that it is located on concrete columns substantially higher than the adjoining dwellings. This is due to the location of the dwelling adjacent to the escarpment located along the rear. The dwelling is located at an elevated level above Barrenjoey Road and is visible from Barrenjoey Road, the surrounding locality and from Pittwater.

The proposed works would not increase the overall height or substantially alter the bulk and scale of the current building. Furthermore, the proposal would require minimal site disturbance, would not result in the loss of any substantial trees or vegetation and would retain screen planting along the front and side boundaries. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. Substantial canopy tree cover would be retained to the rear (above) the site which would retain the appearance of the building within and below surrounding natural environment.

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

Comment:

The proposal designed to integrate with the existing dwelling. The use of planter boxes along the façade of the dwelling will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. The proposal is situated and designed to minimise site disturbance and maintain the natural features of the site.

The bulk and scale of the built form is minimised.

Comment:

As stated above, the landscape plan details new and existing trees and vegetation to assist in reducing the perceived bulk and scale of the development from the public domain and adjacent properties. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. A condition of consent is recommended for two (2) replacement canopy trees to be planted to compensate for the loss of the removal two existing trees to assist in minimising built form.

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

Comment:

This matter has been addressed elsewhere within the report (refer to Clause C1.3 View Sharing under P21DCP). In summary, the proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

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

Comment:

The proposed development will not result in any unreasonable visual privacy or overshadowing impacts to neighbouring properties.

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

Comment:

As above, the proposed development retains and proposed adequate vegetation and landscaping to soften and visually reduce the built form.

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

D12.10 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The control requires a minimum of 60% (441.48m²) of the site area to be landscaped. The site measures 735.8m²

The application proposes a total landscaped area of 34.9% (256.8sqm), representing a variation of 41.9%

It should be noted that the proposed works are predominantly within existing building footprint and the proposal does not seek to reduce the amount of landscaped area from that which currently exists on site. Nevertheless, the proposal is development is considered against the underlying objectives of the Control as follows:

Merit consideration

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

Achieve the desired future character of the Locality.

Comment:

This matter has been discussed within section A4.12 of this report. In summary, it is considered the proposal would achieve the desired future character of the locality as the proposed works would not increase the overall height or substantially alter the bulk and scale of the current building. Furthermore, the proposal would require minimal site disturbance, would not result in the loss of any substantial trees or vegetation and would retain screen planting along the front and side boundaries. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway

The bulk and scale of the built form is minimised.

Comment:

As stated above, the landscape plan details new and existing trees and vegetation to assist in reducing the perceived bulk and scale of the development from the public domain and adjacent properties. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. A condition of consent is recommended for two (2) replacement canopy trees to be planted to compensate for the loss of the removal two existing trees to assist in minimising built form.

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

Comment:

The development has been designed and sited appropriately so to ensure no unreasonable amenity impacts arise for the occupants of the subject site or those of adjoining and surrounding properties.

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

Comment:

As above, the landscape plan details new and existing trees and vegetation to assist in reducing the perceived bulk and scale of the development from the public domain and adjacent properties. Additionally, planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. A condition of consent is recommended for two (2) replacement canopy trees to be planted to compensate for the loss of the removal two existing trees to assist in minimising built form.

Conservation of natural vegetation and biodiversity.

Comment:

As above, the site will retain all existing natural vegetation, with the exception of two (2) exempt tree species. A condition of consent is recommended for two (2) replacement canopy trees. Council's Bushland and Biodiversity Officer has assessed the proposal and has raised no objection subject to the condition that landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants.

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

Comment:

The proposal has been reviewed by Council's Development Engineer, having regard to provisions for stormwater management and has raised no objections.

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

Comment:

Council's Bushland and Biodiversity Officer has assessed the proposal and has raised no objection to the impact on the bushland character of the site and locality subject to the condition that landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants.

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

Comment:

The site will retain sufficient soft surface areas to assist with stormwater infiltration and management.

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

D12.13 Construction, Retaining walls, terracing and undercroft areas

Clause D12.13 requires undercroft areas not be more than 3.5m in height. The proposal would result in an undercroft area of approximately 11.5m.

It should be noted that the height of this undercroft would be directly attributed to the built form of the existing building. Furthermore, the proposal would reduce the overall height of the existing undercroft area. The proposal would require minimal site disturbance and retain screen planting along the front and side boundaries to assist in minimising the visual impact of this undercroft area. A condition of consent is recommended for two (2) replacement canopy trees to be planted within the undercroft area to compensate for the loss of the removal two existing trees. Subject to recommended conditions, the proposal is considered acceptable in this instance.

D12.14 Scenic Protection Category One Areas

The proposal would maintain the concrete grey colour finish which would match the exiting built form. Planter boxes are proposed to be located along the façade of the dwelling which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway. This will also assist in integrating the building with the surrounding bushland setting and landform. This is depicted in the photo-montage below.



Figure 1 Photomontage of proposed development

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$20,718 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,071,754.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

The assessment of the proposal against the provisions of Pittwater 21 DCP has found that the proposed development does not strictly comply with the requirements of the applicable controls related to the Palm Beach locality, landscaped area, building envelope, front and rear building lines. It is considered that these non-compliances are predominately a direct result of the site constraints, topography and the unique form of the existing development. It is considered that the proposal does not result in unreasonable amenity impacts to surrounding properties or result in a development that is out of character with the style and scale of the existing built form of the site. Furthermore, an assessment against the objectives of the development standard and DCP controls has found the proposal to be consistent with those provisions and reasonable.

One submission has been received from one (1) adjoining property. This submission raised concerns particularly relating to height, bulk and scale, overdevelopment, character, privacy, view loss and amenity impacts. The assessment of the scheme reveals the residents issues do not warrant the refusal or further amendment of the application.

Although the proposed development is non-compliant with a number of planning controls, it is considered that many of these are a consequence of the context of the site and the existing built form. Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the existing built form. The proposed works do not include significant site disturbance or environmental impact to facilitate additional floor area as the proposed additions are largely sited within the existing building footprint.

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 4.3 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 DA2020/1693 for Alterations and additions to a dwelling on land at Lot Y DP 367375, 1094 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
SA1 - SITE ANALYSIS PLAN	30/11/2020	Andrew Nolan Architect
DD1 - SITE PLAN	30/11/2020	Andrew Nolan Architect
DD2 - FLOOR PLANS - GARAGE/ENTRY + GARAGE ROOF TERRACE	30/11/2020	Andrew Nolan Architect
DD3 - FLOOR PLANS - UNDERCROFT + LEVEL 1	30/11/2020	Andrew Nolan Architect
DD4 - FLOOR PLANS - LEVEL 2 + LEVEL 3 (ROOF TERRACE)	30/11/2020	Andrew Nolan Architect
DD5 - SECTIONS	30/11/2020	Andrew Nolan Architect
DD6 - ELEVATIONS	30/11/2020	Andrew Nolan Architect
DD7 - EXISTING FLOOR+ DEMOLITION PLANS - UNDERCROFT + LEVEL 1	30/11/2020	Andrew Nolan Architect
DD8 - EXISTING FLOOR +	30/11/2020	Andrew Nolan Architect

DEMOLITION PLANS - LEVEL 2 + LEVEL 3 (ROOF TERRACE)		
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Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (A400533_03)	08/12/2020	Efficient Living Pty Ltd
Bushfire Assessment Report (Ref: 79BA – 1640)	02/12/2020	Sydney Bushfire Consultants
Geotechnical Assessment Report (99711.01 - R001.Rev2)	04/12/2020	Douglas Partners Pty Ltd

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
LC1 - LANDSCAPE CONCEPT PLAN	30/11/2020	Andrew Nolan Architect

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	11/12/2020	Vaughan Milligan Development Consulting Pty Ltd

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	20/01/2021
Transport for NSW	Transport for NSW Referral Response (SYD21/00067/01)	08/02/2021

(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. **Approved Land Use**

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

A Dwelling House is defined as:

"dwelling house means a building containing only one dwelling."

(development is defined by the Pittwater Local Environment Plan 2014 (as amended) Dictionary)

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

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

4. **Prescribed Conditions**

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

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

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

updated information.

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer

management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018

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

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

6. Transport for NSW Conditions/Requirements

The development shall be carried out in accordance with all conditions and requirements raised by TfNSW in their correspondence (Ref. SYD21/00067/01) dated 08 February 2021. Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of the Construction Certificate and final Occupation Certificate.

Reason: To ensure the development is carried out with the requirements of TfNSW.

7. No Approval for Existing Works

This consent does not authorise the use of the roof as a terrace area nor does it regularise any existing works on "Level 3 - Roof Terrace" as shown on the approved plans.

Reason: To ensure that this consent grants approval only for future works and is consistent with the proposal.

FEES / CHARGES / CONTRIBUTIONS

8. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$20,717.54 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 \$2,071,754.00.

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.

9. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

10. **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.

11. **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 Douglas Partners dated 4/12/2020 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.

12. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

- Additional planting of two (2) canopy trees selected from the Native Plant Species Guide - Pittwater Ward (available on Councils website)
- Amendment of planting schedule to ensure that at least 60% of new planting incorporates native vegetation, with species selected from the Native Plant Species Guide - Pittwater Ward (available on Councils website)

The amended Landscape Plan is to be provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

13. **Photographic Archival Record**

A photographic archival record of the site is to be made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the *Photographic Recordings of Heritage Items Using Film or Digital Capture* (Heritage NSW, 2006). This record must be provided to Council for archival purposes.

This record must be submitted and approved by the Certifying Authority prior to commencement of any demolition or works on-site.

The photographic record should be made using digital technology and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

14. **Amendments to the approved plans**

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

- All proposed works on "Level 3 (Roof Terrace)" do not form part of this application and shall be deleted from all plans.

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.

15. **External Finishes**

The external finish shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any finish 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.

16. **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.

17. **Compliance with Standards**

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

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

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

18. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

21. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction

- works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

22. Road Reserve

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

Reason: Public safety.

23. Removing, Handling and Disposing of Asbestos

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

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

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

24. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

25. **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.

26. **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.

27. **Aboriginal Heritage**

If in undertaking excavations or works, any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Warringah Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

28. **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**

29. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Concept Site Plan, inclusive of the following conditions:

i) at least 60% of proposed landscaping incorporates native species selected from the Native Plant Species Guide - Pittwater Ward.

Prior to the issue of any Occupation Certificate details shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

30. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably Civil Engineer. 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.

31. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Andrew Nolan Architects 2020) and these conditions of consent.

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

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

32. **Replacement of Canopy Trees**

At least two (2) locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Plant Species Guide - Pittwater Ward.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these

conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

33. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified on the NSW WeedWise website) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

34. **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.

35. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

36. **Swimming Pool Requirements (existing pool modified by works)**

The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

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

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

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 a Interim / Final Occupation Certificate.

Reason: To protect human life. (DACPLF10)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**37. 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.

38. 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.

39. Use of the "Undercroft Level"

The proposed "undercroft level" is not to be used for the purpose of separate habitation (including a secondary dwelling or dual occupancy) and is not to contain any cooking facilities.

Reason: To ensure that the store room remains ancillary to the dwelling house.

40. CONFIRMED: THE DESIGN AND DRAWINGS ARE THE PROPERTY OF AND TO BE PROVIDED TO THE ARCHITECT BY THE ARCHITECT.

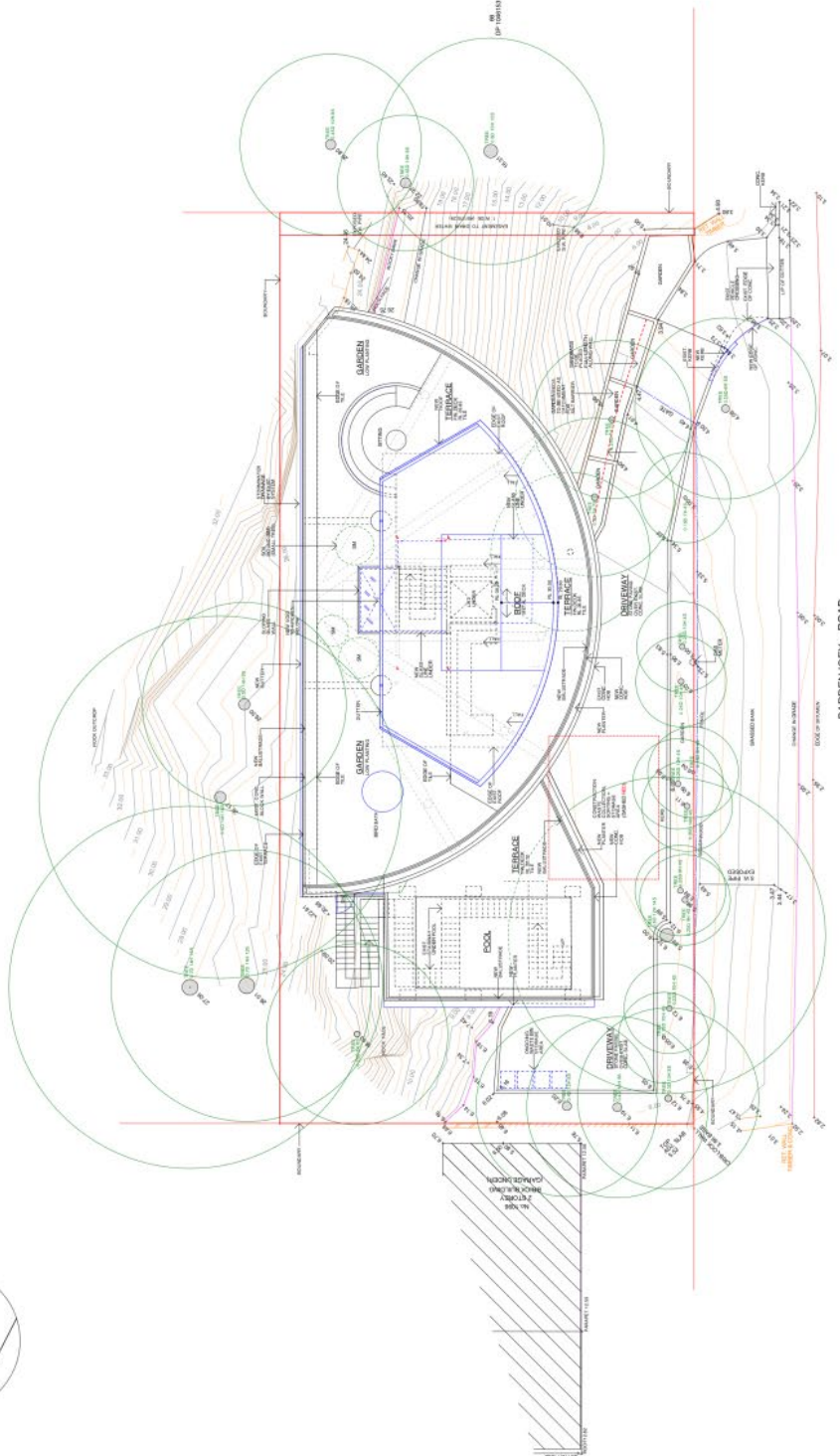
41. THESE DRAWINGS ARE TO BE USED IN CONNECTION WITH THE PROPOSED ALTERATIONS AND ADDITIONS TO THE EXISTING BUILDING AND ARE NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.

42. ALL ALTERATIONS AND ADDITIONS SHALL BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE LOCAL GOVERNMENT AND THE NATIONAL BUILDING REGULATIONS.

43. THE ARCHITECT DOES NOT WARRANT THAT THE DRAWINGS ARE COMPLETELY ACCURATE OR THAT THEY WILL BE FREE FROM ERRORS OR OMISSIONS.

44. IF IN DOUBT, ANY PARTY MUST CONSULT THE ARCHITECT BEFORE PROCEEDING WITH THE WORK.

DWG	TITLE	SCALE
1	SITE PLAN	1:100
2	FLOOR PLANS - GARAGE/ENTRY - GARAGE ROOF TERRACE	1:100
3	FLOOR PLANS - UNDERCROFT - LEVEL 1	1:100
4	FLOOR PLANS - LEVEL 2 - LEVEL 3 (ROOF TERRACE)	1:100
5	SECTIONS	1:100
6	ELEVATIONS	1:100
7	EXIST. FLP - DEMOLITION PLANS - UNDERCROFT - LEVEL 1	1:100
8	EXIST. FLP - DEMOLITION PLANS - LEVEL 2 - LEVEL 3	1:100



1 SITE PLAN 1:100

ANDREW NOLAN ARCHITECT

JACOBS RESIDENCE REMODEL
194 BARENJOEY RD, PALM BEACH NSW

PROPOSED ALTERATIONS - ADDITIONS
SITE PLAN

DATE: 14/04/2021
SCALE: 1:100
DRAWN BY: ANDREW NOLAN
CHECKED BY: ANDREW NOLAN
DD1

[illegible]

ANDREW NOLAN ARCHITECT. INC.

JACOBS RESIDENCE REMODEL
1694 BARRINJOEY RD. PALM BEACH NSW

PROPOSED ALTERATIONS + ADDITIONS
ELEVATIONS

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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

1094 BARRENJOEY ROAD, PALM BEACH

FOR PROPOSED ADDITIONS & ALTERATIONS TO AN EXISTING DWELLING

For: Proposed additions and alterations to an existing dwelling
At: 1094 Barrenjoey Road, Palm Beach
Owner: Mr & Mrs Jacobs
Applicant: Mr & Mrs Jacobs
C/- Vaughan Milligan Development Consulting

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, currently provide a maximum height of 24.33m to the existing roof over the roof top terrace level.

The proposed additions to the dwelling will see the removal of the existing roof over the roof top terrace, and the inclusion of a new roof which varies in height to be between 24.27m & 24.05m above ground level.

The new roof over the lift overrun will provide a height of up to 24.27m above natural ground level and which exceeds Council's maximum building height by 15.77m or 185%. The proposal therefore does not comply with Council's maximum height control.

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 mean standards fixed in respect of an aspect of the development and includes:

"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external

1094 Barrenjoey Road, Palm Beach

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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.

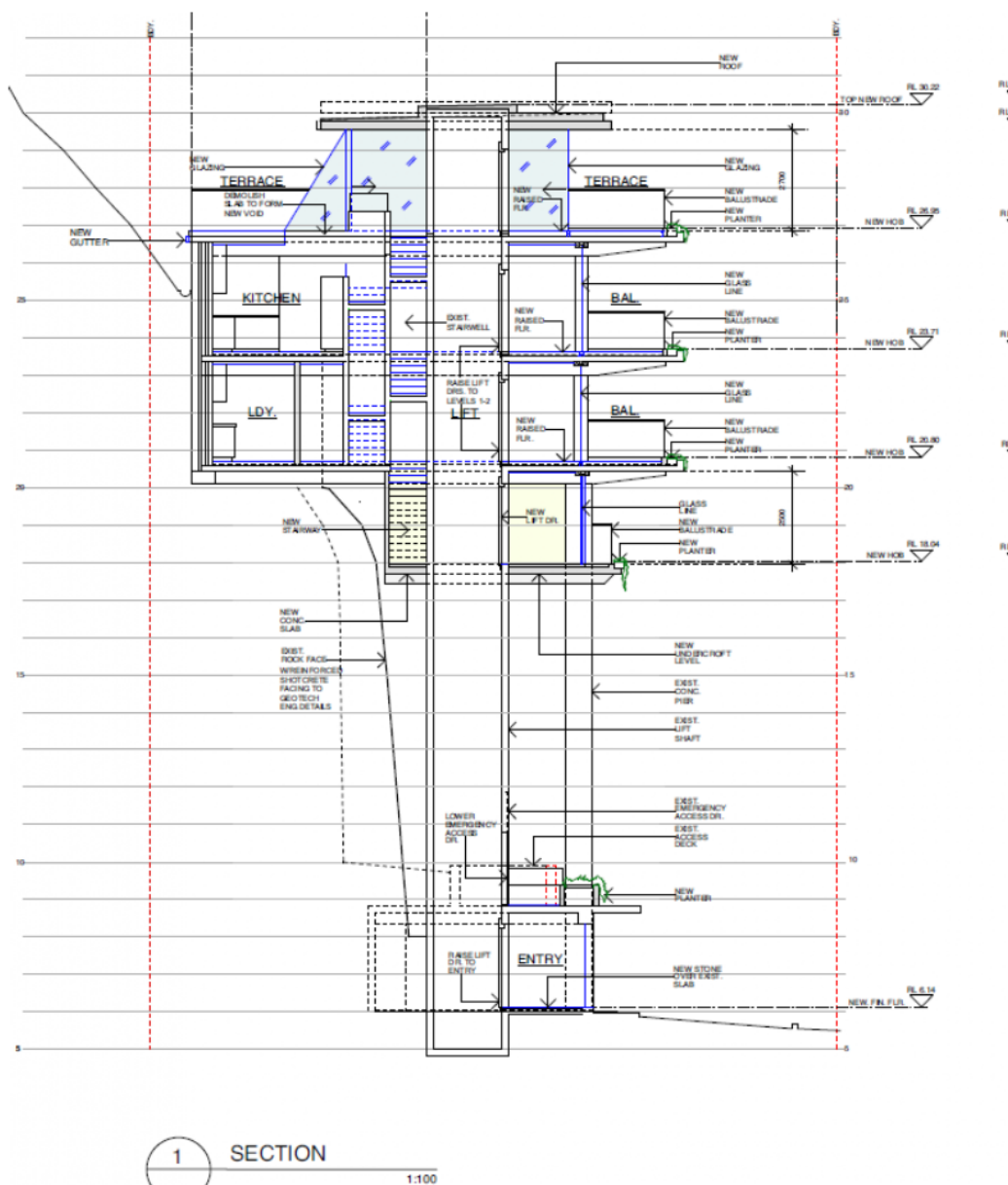


Fig 1: Section extract of proposed works

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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.

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.

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Clause 4.6(2) of the LEP provides:

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

Clause 4.3 (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 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 Palm Beach. The additions to the existing dwelling will result in a maximum building height for the new work of 24.27m, which exceeds the maximum height control by 15.77m or 185%.

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

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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 that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

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

Clause 4.6(5) of 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:

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- *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 construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants, through the inclusion of additional floor area to the undercroft level below the current living levels, and the replacement of the existing roof over the roof top terrace.

The non-compliance with the height control to the proposed roof over the roof top terrace will see a minor reduction in the height of the current roof by between 60mm and 280mm and arises as a direct result of the site's sloping topography and the existing form of the current dwelling.

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 in the form of the existing building

Notwithstanding the non-compliance with the maximum building height control, the new works will continue to provide a unique and attractive residential development that add positively to the character and the architecture within the local area.

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

Due to the northerly 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 Barrenjoey Road 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 Palm Beach.
- 5.3 The proposed additions and alterations to the existing dwelling will have a maximum height of 24.27m, which notwithstanding the works will see a minor reduction in height, will continue to exceed the height control by 15.77mm or 185%.

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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?

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

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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 existing dwelling presents a unique contribution to the local area, and is located significantly above the general height of other dwellings in the locality. The proposal intends to provide for modest changes to the existing building, which will result in a minor reduction in the overall height of between 60mm to 280mm when measured to the proposed roof over the existing roof top terrace.

As a result of the elevated nature of the existing building, the new works, involving the replacement of the existing roof over the roof top terrace will have a height of up to 24.27m.

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

As discussed, the subject building presents a built form which is unique in the area, with no direct comparable properties with similar elevated support posts in the immediate locality. In this regard, it is difficult to consider the building to be compatible with the height and scale of surrounding and nearby development.

That said, the site's characteristics with the inclusion of lower storey planting to partially screened the lower levels, and a modulated façade with open balustrading and planters to be included at each level does assist in reducing the visual bulk of the development.

Other development in the locality which is similarly located mid slope along the escarpment line, and in particular to the north opposite Palm Beach ferry wharf, does have a similar general height above the road level.

In this regard, the building does have a compatibility with other developing on the escarpment in the locality.

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

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 will 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.

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(c) to minimise any overshadowing of neighbouring properties,

The extent of the proposed overshadowing is reflected in the shadow diagrams prepared by Andrew Nolan Architect which note that the minor increase in overshadowing does not materially affect the primary living spaces and outdoor areas of neighbouring properties, as the shadow cast by the new building elements is largely within that cast by the roof top terrace.

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

The primary views of the adjoining neighbours are directed towards the north, and will remain unaffected. Uphill properties are elevated above the subject site, and will maintain their primary views to the north. The opportunity for the surrounding properties 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 provides for alterations and additions to an existing dwelling, which it is an approved development which presents a significant elevation above the road level and is supported on exposed concrete columns. The proposed works seek to provide modest changes to the existing built form, which through the inclusion of the new undercroft level will assist in lowering the apparent height of the building..

The design of the existing dwelling is unique in the locality in that it does not respond directly to the topography, however as the works area set against the backdrop of the escarpment line, the proposed changes will maintain this existing relationship and do not require any substantial disturbance to the existing landform.

(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 significant site disturbance, and maintain and enhance the existing soft landscaped area. The site does not join any sites of heritage significant and the proposal is considered to be reasonable in this portion of Palm Beach.

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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 environmental planning grounds to justify contravening the development standard so*

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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 development and maintain an architectural consistency with the form of the current dwelling which promotes the orderly & 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 primary alterations to the building which result in the continued non-compliance with the maximum height control are in relation to the replacement of the roof over the existing roof top terrace. Given the challenging nature of the site, the primary outdoor recreation space as for the building's occupants is at the upper levels of the building and the provision of a new roof over the roof top terrace, which whilst lower than the existing roof, will provide for the improved solar protection for the owners, which will enhance the protection of health and safety of the occupants (1.3(h)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that manages the bulk and scale and maintains views over and past the building from the public and private domain. The element which breaches the height standard is an important element in providing for safe and healthy outdoor recreation space for the building's occupants.

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.

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

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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 street and the location and form of the existing development, 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 are considered to be specified development that is not inherently incompatible with the objectives of the zone.

The proposal provides for alterations and additions in a manner which will retain the single dwelling character of the site and the immediate area.

The site and its location in Barrenjoey Road and by being prominently visible from Pittwater is considered to be an area of special visual and aesthetic value.

The external form of the development will be enhanced through the visual softening introduced by the landscaping and open style balustrades, together with the reduction in the height of the roof top terrace roof.

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The current dwelling is unique in the area and its architectural contribution to the locality will be maintained and enhanced through the proposed additions and alterations.

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

The design prepared by Andrew Nolan Architect 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 construction of alterations and additions to an existing dwelling, which has a unique place in the architecture of the immediate area.

As the design utilises a compatible colour palette, the building respects the predominant visual appearance 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 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.

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- (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 provide for additions and alterations to the dwelling which will provide for a height of up to 24.27m.

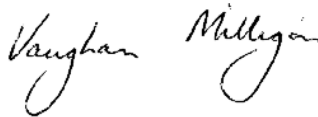
This variation occurs as a result of the sloping topography of the site and siting of existing development.

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 3.7	DA2020/1071 - 23 DAKARA DRIVE FRENCHS FOREST - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2021/247913
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 DA2020/1071 for alterations and additions to a dwelling house on land at Lot 7 DP 230246, 23 Dakara Drive, Frenchs Forest, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1071
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 7 DP 230246, 23 Dakara Drive FRENCHS FOREST NSW 2086
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Pierre Demirdjian Nishan Demirdjian Henri Demirdjian
Applicant:	Henri Demirdjian

Application Lodged:	01/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/12/2020 to 13/01/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 10.4%
Recommendation:	Approval

Estimated Cost of Works:	\$ 224,000.00
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PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for alterations and additions to a residential dwelling pursuant to the *Warringah Local Environmental Plan (WLEP) 2011*, including the following:

Lower ground level

- Demolition of walls between the existing rumpus rooms to facilitate a larger rumpus room.
- Increase the size of the existing bathroom.
- Reduction in overall size of one (1) window along the rear wall of the rumpus room.

Ground level

- Demolition of internal walls to facilitate an open plan kitchen, dining and living rooms.
- Removal of bathroom and extension of existing master bedroom and en-suite.
- Removal of windows along the eastern elevation to the kitchen to be replaced with a sliding door for access to the new balcony off the kitchen.
- Removal of windows along the northern elevation.
- Removal of windows along the western elevation to the living room to be replaced with sliding stacked doors for access from the living room to the new timber deck.
- New front door

First floor level

- Demolition of the existing first floor level to facilitate an extension to accommodate Bedrooms 1, 2 and 3 and an additional master bedroom with en-suite and walk-in robe, a new main bathroom and additional family room.
- New balcony along the eastern elevation
- New timber deck along the western elevation
- Additional windows along the northern and southern elevations
- Additional sliding doors along the eastern and western elevations to gain access to the new balcony (eastern elevation) and the new timber deck (western elevation)

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 7 DP 230246 , 23 Dakara Drive FRENCHS FOREST NSW 2086
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Dakara Drive.</p> <p>The site is irregular in shape with a frontage of 13.64m along Dakara Drive and a depth of 40.9m. The site has a surveyed area of 711.2m².</p> <p>The site is located within the R2 Low Density zone and accommodates a two (2) and three (3) storey residential dwelling.</p> <p>The site has an easterly orientation and is located on a cross-fall of approximately 24.5% falling from the north-eastern corner toward the south-western corner.</p> <p>The site has no known threatened species. One (1) canopy tree is located centrally in the front setback area. Areas of turf are located throughout the site. Small trees are located at the south-eastern end of the existing swimming pool.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one (1) and two (2) storey residential dwellings.</p>

Map:



SITE HISTORY

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

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

Application History

A Request for Further Information letter was sent to the Applicant on 5 January 2021 outlining the following concerns that were to be addressed: Height of Buildings (specifically the provision of a Long-Section plan and a Clause 4.6 request to vary the development standard), Wall Heights, Side Boundary Envelopes and Building Bulk. Amended plans were provided on 25 January 2021, excluding the Clause 4.6 request. Council requested this information again, and advised that building bulk remained unacceptable and was to be amended accordingly.

The Applicant was advised that the amended plans received remained inadequate and a redesign was required in order for the application to proceed to DDP. An additional 7 days was given to the Applicant to amend the design accordingly.

A final set of amended plans were provided to Council on 17 March 2021 which addressed Council's concerns (primarily the first floor alterations were considerably reduced so as to result in a reasonable bulk and scale of the built form).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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 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 amended plans to propose a reduced scope of works, updated Clause 4.6 which satisfactorily addresses the relevant clauses within the WLEP 2011. Amended plans and an updated Clause 4.6 were provided to Council on 11 February 2021.</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 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> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission</p>

Section 4.15 Matters for Consideration'	Comments
	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.
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 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 08/12/2020 to 13/01/2021 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:
Mr Mathieu Romuald Barrault	25 Dakara Drive FRENCHS FOREST NSW 2086
Ms Frances Mary Whitfield	21 Dakara Drive FRENCHS FOREST NSW 2086

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

- Maximum building height
- Bulk and scale
- Overshadowing (impact upon solar panels and subsequent financial implications to adjoining property owner)
- Privacy
- Garbage bin location

The matters raised within the submissions are addressed as follows:

- *Maximum building height*

Comment:

Concern has been raised by the owner of the adjoining property, being 25 Dakara Drive, with regards to the proposed maximum building height. The *Warringah Local Environmental Plan (WLEP) 2011* Clause 4.3 stipulates developments must not extend beyond 8.5m. The proposed development results in a maximum building height of 9.6m when measured from the highest point to the natural ground level. A Clause 4.6 written request to vary a development standard has been provided with this application and has been assessed accordingly under section 4.6 Exceptions to development standards of this report. In this instance, the Clause 4.6 is considered acceptable and thus may vary the development standard.

This does not warrant refusal for this application.

- *Bulk and scale*

Comment:

Concern has been raised by the owner of the adjoining property, being 25 Dakara Drive, regarding the overall bulk and scale of the proposed first floor level. Council requested the Applicant amend the proposed plans, particularly the first floor level, to show greater side setbacks. The increased side setbacks to the first floor level will create greater articulation which will minimise the bulk and scale of the proposed first floor level, as well as minimise privacy impacts upon the occupants of 25 Dakara Drive.

Further discussion on this can be found under section D9 Building Bulk of this report.

This does not warrant refusal for this application.

- *Overshadowing*

Comment:

Concern has been raised by the owner of the adjoining property, being 25 Dakara Drive, regarding the potential overshadowing to their solar panels and main private open space as a result of the proposed first floor level. Amended plans were provided to Council on 17 March 2021 which indicate an enhanced setback distance for the first floor level to the southern side boundary. Further, the shadow diagrams have been updated which now shows a significantly reduced overshadowing to 25 Dakara Drive, thus resulting in an acceptable degree of overshadowing.

A further discussion on this can be found under section D6 Access to Sunlight of this report.

This does not warrant refusal for this application.

- *Privacy*

Comment:

Concern has been raised by both owners of the adjoining properties, being 21 Dakara Drive and

25 Dakara Drive, with regards to the potential privacy impacts arising as a result of the proposed development.

Of particular concern to the owners of 21 Dakara Drive is the proposed timber deck and close proximity to the existing deck and windows at their property. Should this application be approved, a condition of consent will be included within this report which will ensure privacy screens are erected along the northern and southern elevations of the proposed timber deck on the ground floor level and first floor level so as to mitigate privacy impacts upon adjoining properties. It is also noted that the first floor level deck has been stepped in from the northern side boundary to enhance the setback distance to the deck of 21 Dakara Drive.

Of particular concern to the owners of 25 Dakara Drive are the proposed windows along the southern elevation. Should this application be approved, a condition of consent will be included within this report which shall ensure the windows along the southern elevation on the ground floor and first floor shall have a minimum sill height of 1.6m when measured from the finished floor level. It is noted, the two (2) windows on the basement level along the southern elevation are for the garage. These windows will not give rise to any unreasonable amenity impacts to the occupants of 25 Dakara Drive, as such the recommended condition will not apply to these windows.

This does not warrant refusal of the application.

- *Garbage bin location*

Comment:

The owners of 25 Dakara Drive have raised concern with regards to the proposed location of the garbage bins which are within close proximity to the windows along their dwelling's northern elevation (as indicated on the Landscape Plan, drawing no. 16, prepared by Samir Bayeh, dated 14 November 2019). The owners of 25 Dakara Drive request that the garbage bin area is moved elsewhere on the site so as to mitigate unpleasant smells emanating from the garbage bins. The location of the proposed bin area will be included as a condition of consent.

This does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is for alterations and additions to an existing dwelling. No significant landscape features are indicated be affected by the proposed works. The DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions.
NECC (Development Engineering)	The proposed development does not require OSD and connection of stormwater to the existing inter-allotment drainage easement within the site is satisfactory. No objection to approval, subject to conditions as recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A364049, dated 14 November 2019).

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

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	% Variation	Complies
Height of Buildings:	8.5m	Existing - 10.69m Proposed - 9.4m	25.7% 10.5%	No No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)

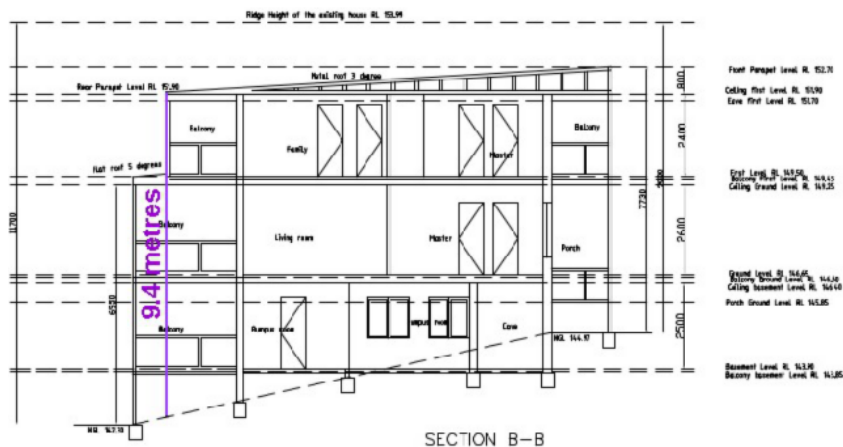
Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.4m
Percentage variation to requirement:	10.5%



Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements 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 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:

- *Notwithstanding the non-compliance to the numerical requirements of this development standard the proposal results in the following:*
 - Reasonable bulk and scale that is consistent with surrounding properties*
 - Provision of adequate sunlight is provided to all adjoining buildings*
 - No impact upon current views*
 - No unreasonable loss of privacy*
 - Compliance with this standard is unreasonable as the parcel of land is steep, falling from the street frontage to the rear by approximately 18%.*

The non-compliance to the numeric requirement of this development standard is minor in nature, with an average height of 8.99m, which is 0.4m (or 5.76%) higher than the maximum 8.5m. Further, altering the design of the roof will not result in a better development.

The proposed alterations and additions to the existing residential dwelling have been designed in a way that maintains the visual bulk and scale of the dwelling, as well as achieving consistency with the visual continuity of the existing streetscape. As such, the proposed development is unlikely to impact upon the amenity of adjoining properties, and will serve to increase the usability and amenity of the subject site. The site is located on a slope of approximately 24.5%, and the design of the existing dwelling does not generally step with the topography of the site. However, the proposed development will maintain the

design of the dwelling which will allow for the continuity of the visual bulk and scale. The proposal, when viewed from the street frontage, will continue to present as a two (2) storey dwelling with a garage on the basement level. As such, the proposed alterations and additions is considered to be generally minor in nature and will have minimal impact upon the amenity of adjoining properties.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

The proposal is compatible with the height and scale of surrounding and nearby development as this section of the land is typified by dwellings oriented towards the west in order to obtain district views and, due to the topography, contains significant balconies in order to achieve satisfactory areas of private open space. As discussed above, the existing dwelling is located on a slope of approximately 24.5%, as are the adjoining properties. Therefore, the proposed alterations and additions will achieve compatibility with the height and scale of surrounding and nearby developments. It must be noted that the existing building is being reduced by 1.29m which improves its relationship with nearby development.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

Compatibility of the proposed alterations and additions is further endorsed by the fact that there are no unreasonable impacts upon the amenity of adjacent or nearby properties as a consequence of this breach of the height control in terms of overlooking, overshadowing and view loss. The proposed balconies located off the rear of the dwelling on the ground and first floor levels will be conditioned to include 1.65m high privacy screens along both the northern and southern elevations - this will further enhance the privacy of the occupants of the subject site and those of adjoining properties.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

Amended plans provided to Council indicate the proposal has been sensitively designed to enhance the visual compatibility of the site by providing for a more sensitive design to integrate with the surrounding natural and urban environment. The first floor level extension is now generously recessed along the southern elevation, thus creating a built form that will appear as secondary to the natural environment. A Landscape Plan has been provided with this application which indicates the retention of the large canopy tree within the front setback area. Further, the majority of the proposed development is located over the existing building footprint, thus resulting in minimal adverse impacts to the scenic quality of Warringah's coastal and bush environments.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

Similar to the above response, the crafting of the proposal has given significant regard to visual compatibility and will not result in an unreasonable visual impact when viewed from the street frontage and adjoining properties.

Zone objectives

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

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

Comment:

The proposal will continue to allow for the housing needs of the community within a low density residential environment.

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

Comment:

The proposal maintains housing variety within the residential area.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposal will continue the existing residential use.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, issued by the NSW Department of Planning & Infrastructure, 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).

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Northern elevation: 7.6m - 8.9m Southern elevation: 8.9m - 9.6m	5.5% & 23.6% 23.6% & 33.3%	No No
B3 Side Boundary Envelope	4m (Northern elevation)	Encroachment (existing)	N/A	No
	4m (Southern elevation)	No encroachment	N/A	Yes
B5 Side Boundary Setbacks	0.9m (Northern boundary)	Front Balcony: 0.7m - 0.9m Dwelling (First Level): 0.9m - 2.1m Rear Deck: 3.1m - 3.5m	N/A N/A N/A	No & Yes Yes Yes
	0.9m (Southern boundary)	Front Balcony: 4.8m - 5.1m Dwelling (First Level): 5.1m - 5.9m Rear Deck: 5.9m - 6.1m	N/A N/A N/A	Yes Yes Yes

B7 Front Boundary Setbacks	6.5m	9.3m	N/A	Yes
B9 Rear Boundary Setbacks	6m	14.5m - 15.9m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (284.4m ²)	40.8% (290.8m ²)	N/A	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 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	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

B1 Wall Heights

This Clause relies upon the objectives of Clause 4.3 Height of Buildings under WLEP 2011.

An assessment of the proposal against the objectives of this Clause have been provided in the section of this report relating to Clause 4.3 Height of Buildings of WLEP 2011. This assessment has found the proposal to be consistent with the objectives of Clause 4.3 Height of Buildings.

B3 Side Boundary Envelope

This control requires development to be sited within a building envelope. The building envelope is measured from the side boundary to a maximum height of 4.0m and angled inward at 45 degrees. The northern elevation exceeds the building envelope, however, this is existing and the retention of such a non-compliance will not give rise to any unreasonable additional amenity impacts upon the neighbouring property, being 21 Dakara Drive. As this is an existing non-compliance that will not change under this proposal, a merit consideration is not required in this instance.



Image 1. North Elevation envelope breach (in yellow).

B5 Side Boundary Setbacks

Description of non-compliance

This control requires development to be setback from the side boundaries at a minimum distance of 0.9m.

The proposed development generally achieves compliance with the side setback control, except for the proposed balcony along the eastern (front) elevation of the first floor level, which maintains the below porch's side setback distance of 0.7m setback to the northern side boundary.

Due to the minor nature of the non-compliance, a merit assessment is conducted below.

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The new front balcony will retain the existing northern side setback distance as existing, and will be located over the existing building footprint. As such, the proposal will not impact upon the existing deep soil areas of the site.

- *To ensure that development does not become visually dominant.*

Comment:

The nature of the non-compliance is minor and does not present as visually dominant to the street frontage and adjoining properties.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

As above, the nature of the non-compliance is minor and does not create an unreasonable bulk and scale.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

While the new front balcony will result in a minor non-compliance to the northern side setback, the balcony is located adjacent to the driveway and garage of 21 Dakara Drive. As such, this non-compliance will allow for a reasonable level of privacy and amenity. Further, the non-compliant balcony is located on the northern elevation of the ground level, thus not resulting in any solar access issues.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The proposed new front balcony will not impact upon views currently enjoyed by the subject site and adjoining properties.

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

D6 Access to Sunlight

Detailed description of non-compliance

The owner of 25 Dakara Drive raised concern within a submission that the proposed first floor extension will create unreasonable shadows across their solar panels and main private open space within the front area of their property.

While the proposed first floor extension achieve compliance with the side setback control, the proposal did not, however, achieve compliance with this control. As such, amended plans were provided to Council which shows a reduced scope of works to the proposed first floor extension by way of enhancing the southern side setback distances. Amended shadow diagrams were provided to Council on 20 March 2021 and it is noted the proposal achieves compliance with this control. However, as a submission was received in relation to the loss of solar access, a merit assessment is conducted below.

Merit consideration

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

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

Amended shadow diagrams were provided to Council which indicate that reasonable access to sunlight is maintained for the solar panels and private open space of 25 Dakara Drive. Further, reasonably solar access is achieved for the main private open space of the subject site.

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

Comment:

Amended plans were provided to Council which indicate a greater southern side setback to the first floor level extension. As such, the proposal encourages an innovative design solution which will improve the urban environment.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

Concern was raised by the owner of 25 Dakara Drive with regards to the proposal's potential overshadowing impact upon their solar panels and main private open space (which, due to the siting of the dwelling, is located within the front yard). As indicated in the below images, adequate solar access is made available to the solar panels and main private open space of 25 Dakara Drive between the hours of 9am and 3pm on 21 June. Further, the proposal adequately maximises the penetration of mid-winter sunlight to windows, living rooms and high use indoor and outdoor areas.

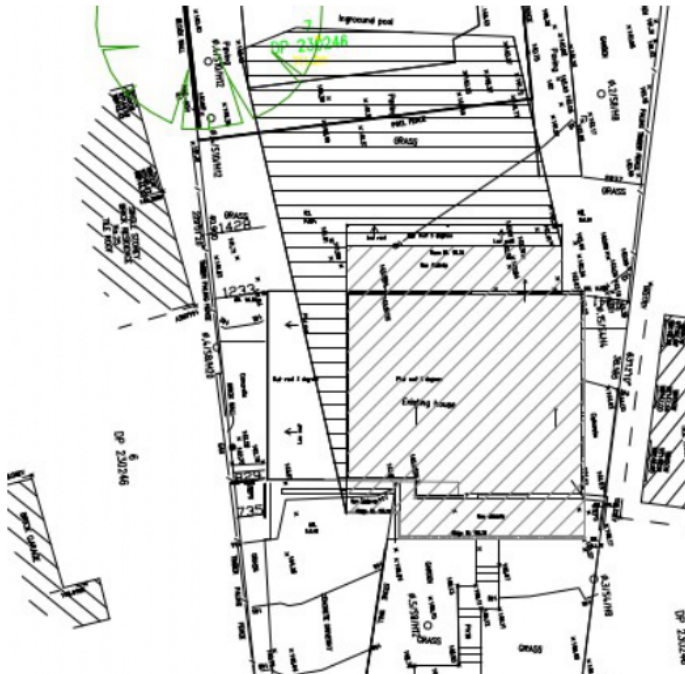


Image 1. 9am Shadow Diagram



Image 2. 12noon Shadow Diagram



- The owner of 21 Dakara Drive has requested the proposed balcony on the first floor level be recessed along the northern elevation so as to reduce privacy impacts. The Architect has amended the first floor level deck to be recessed and thus the northern side setback has been enhanced. To further enhance the privacy, a condition of consent will be included within this report to ensure privacy screens are erected along the basement level, ground level and first level balconies, along both the northern and

southern elevations. The privacy screens will be conditioned to have a minimum height of 1.65m (when measured from the finished floor level of the balcony).

The owner of 25 Dakara Drive has raised concern with regards to the proposed windows along the southern elevation of the proposed development. As outlined under the 'Submissions' section of this report, the two (2) windows on the basement level of the southern elevation are for the garage. In this instance, these windows will not give rise to any unreasonable amenity or privacy impacts to the occupants of 25 Dakara Drive. However, a condition of consent will be recommended within this report which will ensure amendments to the windows on the ground floor and first floor along the southern elevation so as to mitigate privacy impacts upon the private external open space and internal living areas/bedrooms of 25 Dakara Drive.

A merit assessment is conducted below.

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

While the amended plans show an increased southern side setback distance to the proposed first floor level, the proposal retains the installation of two (2) windows on the basement level to the garage, one (1) window on the ground level to the dining room and one (1) window each on the first floor level to Bedroom 1 and Bedroom 2 all along the southern elevation.

The windows have been included to allow for cross-ventilation of air, as well as to create a degree of articulation to the external façade. As such, Council will not request the applicant remove these windows, rather, a condition of consent will be included to amend the minimum sill heights of the windows on the ground floor and first floor levels on the southern elevation. The two (2) windows on the basement level are for the garage, as such, these windows do not require any amendments as the garage is not a habitable room and is unlikely to cause any unreasonable visual and acoustic privacy impacts for the occupants of the subject site and those of adjoining properties.

As conditioned, the proposal will satisfactorily provide a high level of visual and acoustic privacy for the occupants of the subject site and those of adjoining properties.

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

Comment:

As conditioned, the proposal will result in innovative design solutions that will improve the urban environment.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposed development ensures an appropriate level of person and property security is maintained for the occupants of the subject site and its visitors.

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

D9 Building Bulk

Detailed description of non-compliance

Concern has been raised by the owners of 25 Dakara Drive with regards to the proposed building bulk, particularly the four (4) storey appearance of the dwelling from the western (rear) elevation and the southern setback distance to the first floor level.

Due to the slope of the land, there is a basement level which encompasses a garage and storage areas. The proposal seeks to make the basement level a garage and habitable floor space to include a rumpus room, laundry and bathroom. However, as per the western elevation plan (drawing no. 7 West Elevation, prepared by Samir Bayeh, dated 17 March 2021), the rear of the dwelling will present as a three (3) storey element, which is consistent with homes located on steeply sloping sites. Further, amended plans were provided to Council which indicate an enhanced southern side setback for the first floor level extension (ranging between 5.1m - 5.9m), thus minimising the appearance of the built form when viewed from 25 Dakara Drive and other neighbouring properties.

In this instance, the overall building bulk has been significantly reduced, however, a merit assessment is conducted below.

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

As discussed elsewhere in this report, amended plans were provided to Council which indicate a greater southern side setback to the first floor level extension. As such, the proposal encourages an innovative design solution which will improve the urban environment.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The amended plans provided allow for visual relief of the built form when viewed from adjoining properties and the street frontage of Dakara Drive.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$2,240 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$224,000.

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environment Plan 2011 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 WLEP 2011 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 DA2020/1071 for Alterations and additions to a dwelling house on land at Lot 7 DP 230246, 23 Dakara Drive, FRENCHS FOREST, 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
1. Site Plan	17 March 2021	Samir Bayeh
2. Proposed Basement Floor	17 March 2021	Samir Bayeh
3. Proposed Ground Floor	17 March 2021	Samir Bayeh
4. Proposed First Floor	17 March 2021	Samir Bayeh
5. Proposed Roof Plan	17 March 2021	Samir Bayeh
6. Proposed East Elevation	17 March 2021	Samir Bayeh
7. Proposed West Elevation	17 March 2021	Samir Bayeh
8. Proposed North Elevation	17 March 2021	Samir Bayeh
9. Proposed South Elevation	17 March 2021	Samir Bayeh
10. Section A-A	17 March 2021	Samir Bayeh
11. Demolition Plan	14 November 2019	Samir Bayeh
21. Section B-B	17 March 2021	Samir Bayeh

Engineering Plans		
Drawing No.	Dated	Prepared By
12. Sediment and Erosion Control Plan	14 November 2019	Samir Bayeh

13. Stormwater Plan	14 November 2019	Samir Bayeh
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Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (A364049)	14 November 2019	Samir Bayeh
Geotechnical Assessment Report (Ref: GR1155.1J - Frenchs Forest)	20 August 2020	JC Geotechnics Pty Ltd

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
16. Landscape Plan	14 November 2019	Samir Bayeh

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste management plan	Not dated	Not signed

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,240.00 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 \$224,000.00.

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. **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.

7. **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.

8. **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.

9. **Privacy Screens**

Privacy screens achieving a minimum height of 1.65m (measured from the finished floor level) are to be erected for the entire length of the outermost northern and southern edges of the following proposed balconies on the:

1. basement level located off the garage and rumpus room; and,
2. ground floor located off the living and dining rooms; and,
3. first floor level off Bedroom 1, the family room and Bedroom 3;

as shown on the approved plans.

The privacy screens shall be of fixed panels or louver style construction (with a minimum spacing of 10mm, but no more than 20mm), in materials that complement the design of the approved development.

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

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

10. **Amendments to windows on the Southern Elevation**

The windows along the southern elevation, on the ground floor and first floor levels, shall be amended to reflect a minimum sill height of 1.65m, when measured from the finished floor levels.

Reason: To ensure privacy is maintained for the adjoining property, being 25 Dakara Drive.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Tree protection**

- (a) Existing trees which must be retained
 - i) All trees unless exempt under relevant planning instruments or legislation
 - ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

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

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

14. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

15. **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.

16. **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.

17. **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**

18. **Stormwater Disposal**

The stormwater drainage works shall be connected to the existing drainage system and 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 the Occupation Certificate.

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

19. **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying

Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

(a) Geotechnical Assessment Report, dated 20 August 2020, prepared by JC Geotechnics Pty Ltd.

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

Reason: To ensure compliance with standards.

20. **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.

21. **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.

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

22. **Location of Garbage Facilities**

The proposed location of the garbage facilities (as indicated on the Landscape Plan, drawing no.16, prepared by Samir Bayeh, dated 14 November 2019) is not acceptable and must be relocated elsewhere on the site to allow for minimal amenity impact (visual and odour) on adjoining properties.

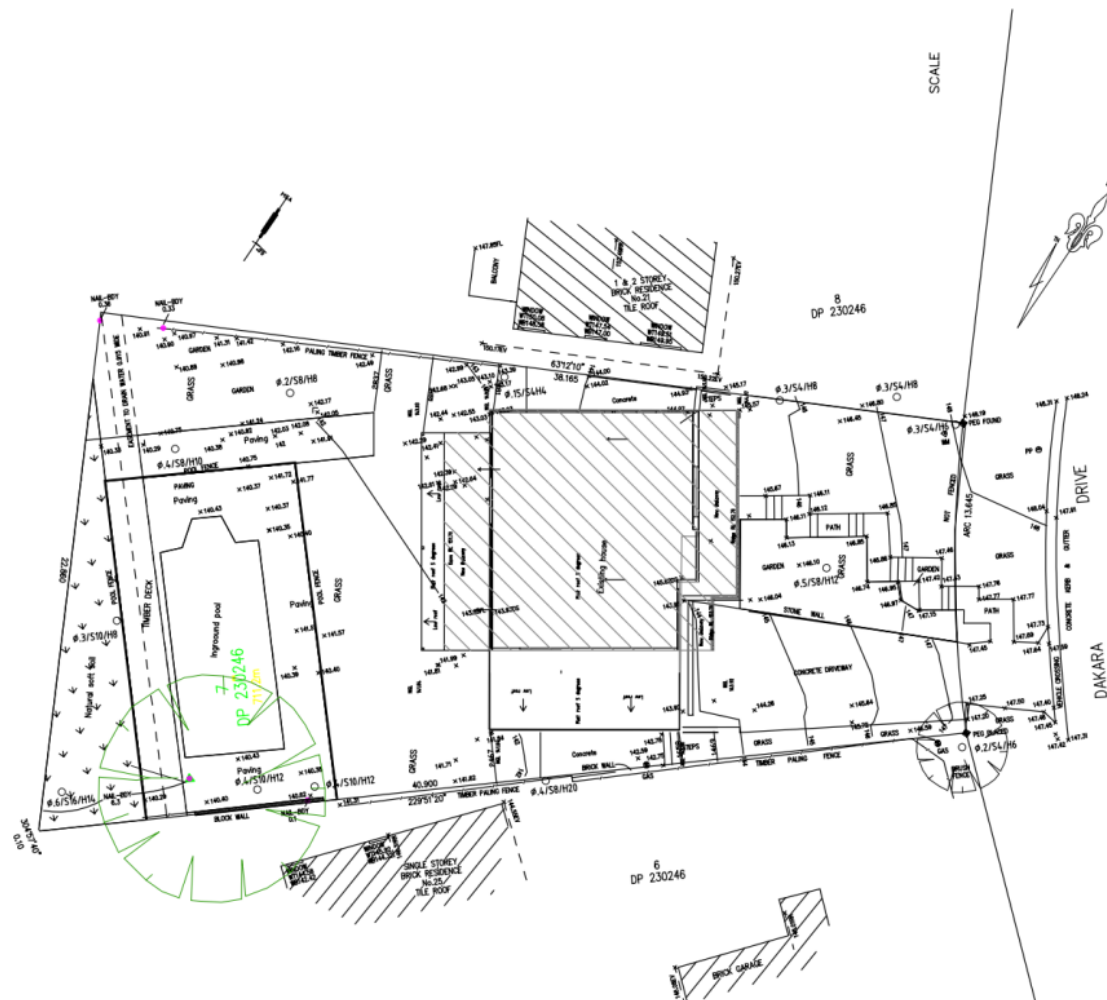
Reason: To result in minimal amenity impacts upon adjoining properties.

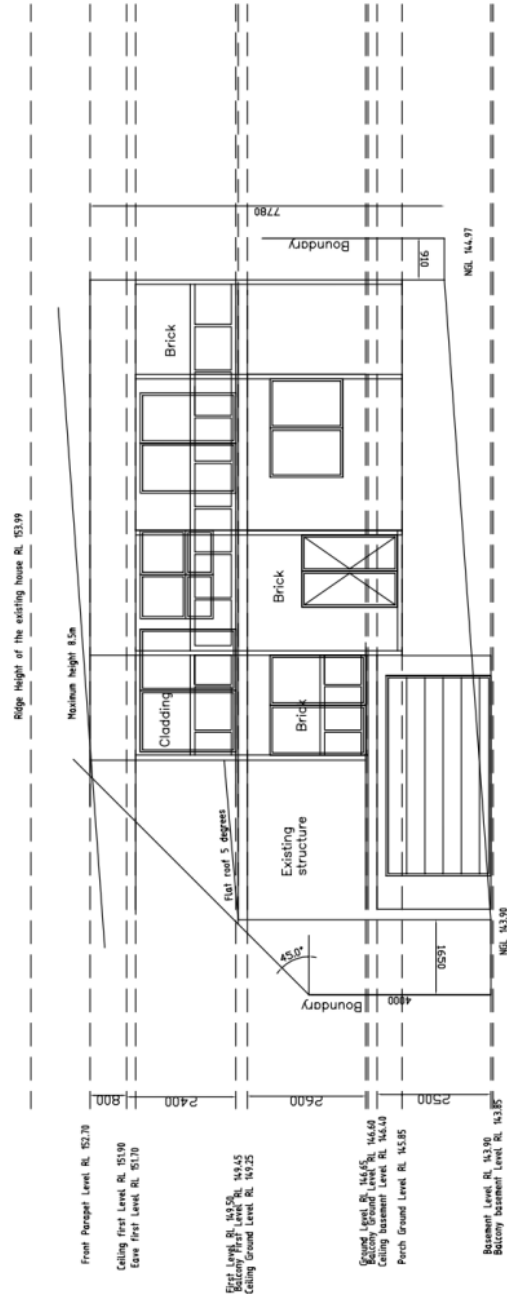
SUMMARY FSR	
SITE AREA	711.2
EXISTING FLOOR AREA	242
PROPOSED EXTENSION	28
TOTAL FLOOR SPACE AREA	270
ALLOWABLE FSR	0.50:1
ALLOWED BUILT AREA	355.6
F.S.R. USED	0.38:1

PROPOSED ALTERATION AND ADDITION
SITE PLAN
FOR PIERRE DEMERJAN
23 DAKARA DRIVE
FRENCHS FOREST

SCALE 1:200
DATE 17.03.2021
JOB No. DWG. No. ISSUE
1 S. BAYEH S. BAYEH
001

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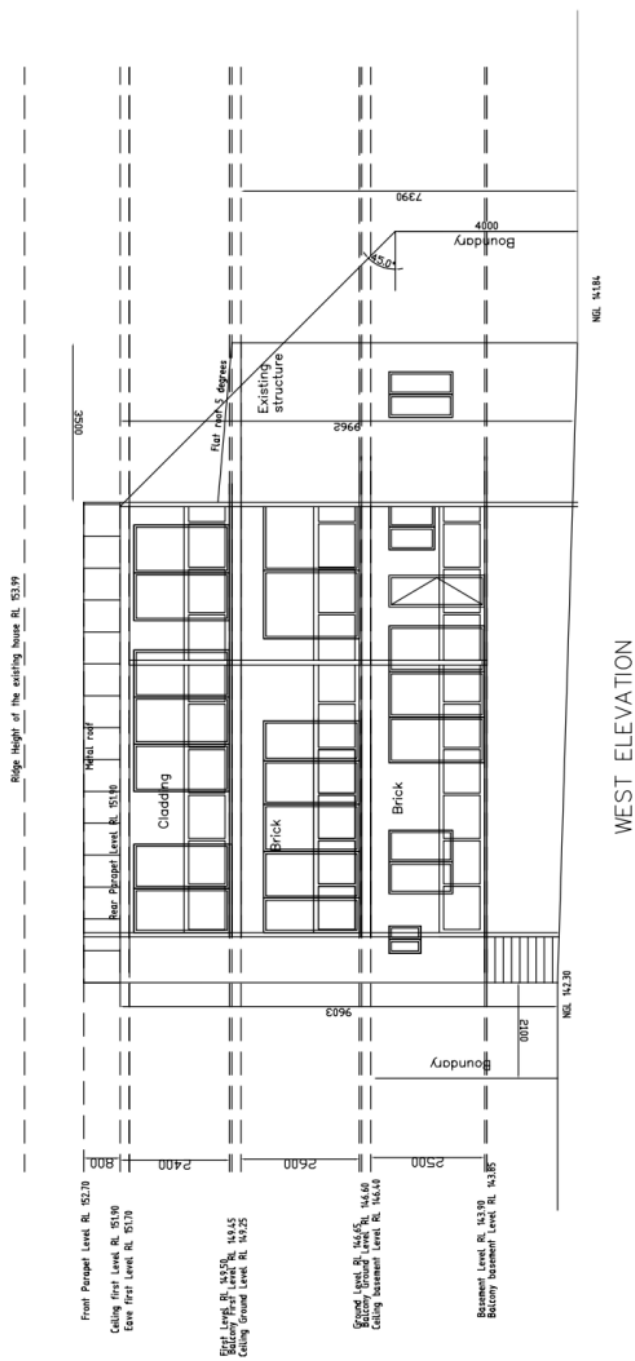


EAST ELEVATION

PROPOSED ALTERATION AND ADDITION
PROPOSED EAST ELEVATION
FOR PIERRE DEMERJAN
23 DAKARA DRIVE
FRENCHS FOREST

SCALE	DATE	DRAWN	CHECKED
1:100	17.03.2021	S. BAYEH	S. BAYEH
JOB No.	DWG. No.	ISSUE	
001	6		

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PROPOSED ALTERATION AND ADDITION
PROPOSED WEST ELEVATION
FOR PIERRE DEMERJIAN
223 DAKARA DRIVE
FRENCHS FOREST

SCALE 1:100	DATE 17.03.2021	DRAWN S. BAYEH	CHECKED S.BAYEH
JOB No. 001	DWG. No. 7	ISSUE	

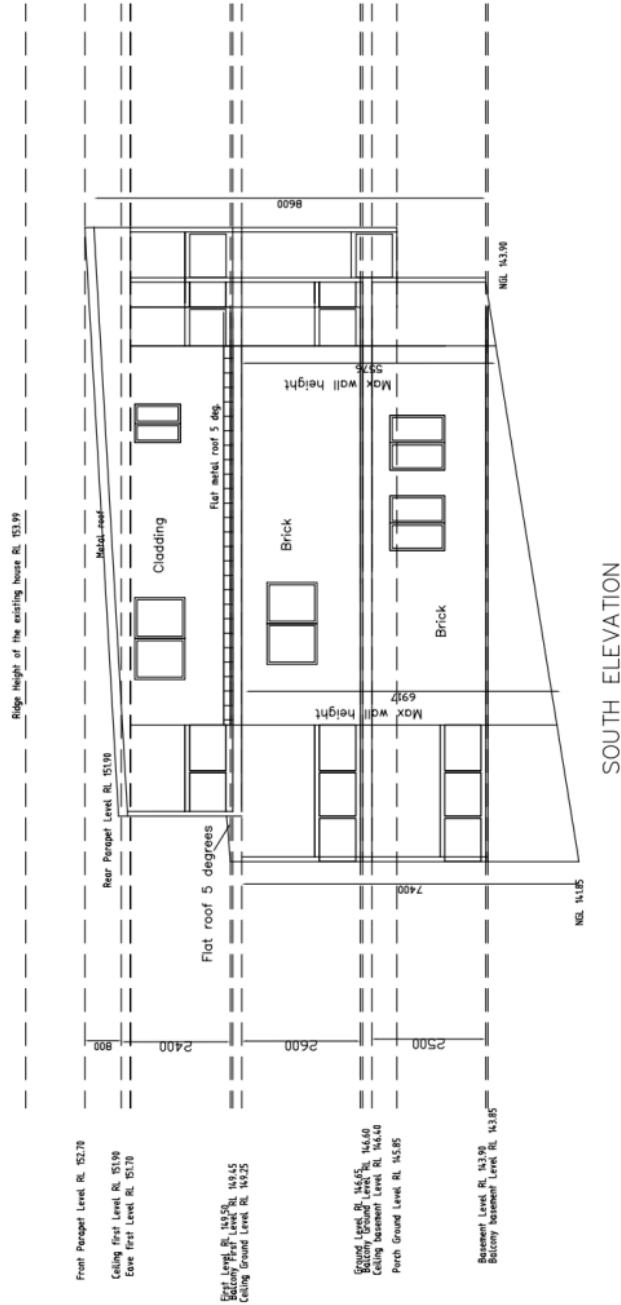
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PROPOSED ALTERATION AND ADDITION
PROPOSED NORTH ELEVATION
FOR PIERRE DEMERJIAN
23 DAKARA DRIVE
FRENCHS FOREST

SCALE	DATE	DRAWN	CHECKED
1:100	17.03.2021	S. BAYEH	S.BAYEH
JOB No.	DWG. No.	ISSUE	
001	8		

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PROPOSED ALTERATION AND ADDITION
PROPOSED SOUTH ELEVATION
FOR PIERRE DEMERJIAN
23 DAKARA DRIVE
FRENCHS FOREST

SCALE	DATE	DRAWN	CHECKED
1:100	17.03.2021	S. BAYEH	S.BAYEH
JOB No.	DWG. No.	ISSUE	
001	9		

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Date 11.02.2021

Address of Site:

23 Dakara Drive - Frenchs Forest

Height of building

The document must clearly state that it is a variation made under the provisions of Clause 4.6 of WLEP 2011.

It must demonstrate:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- that there are sufficient environmental planning grounds to justifying contravening the development standard; and
- that the proposed development will be in the public interest; and
- whether the contravention of the development standard raises any matter of significance for state or regional planning; and
- the public benefit of maintaining the development standard.

CLAUSE 4.6 VARIATION

- What is the name of the environmental planning instrument that applies to the

land?

Warringah Local Environmental Plan 2011

- **What is the zoning of the land and what are the objectives of the zone**

Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by Landscaped settings that are in harmony with the natural environment of Warringah.

- **Identify the Development Standard to which this Clause 4.6 Variation applies?**

The planning instrument "Warringah Local Environmental Plan 2011
" [Clause 4.3 Height of buildings](#):

What are the objectives of the development standard?

The objectives of this clause are as follows:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2A) If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.

- **What is the numeric value of the development standard in the environmental planning instrument?**

Height of Buildings Map - Sheet 1800_COM_HOB_007_020_20111122

- **How do the existing and proposed numeric values relate to the development standard? What is the percentage variation (between your proposal and the environmental planning instrument)?**

Height of Building			
Current Height of Building (m)	Maximum Height of Building under WLEP2011 (m)	Proposed Height of Building (m)	Percentage Variation
varies between 9.03 & 11.70m	8.5m	Front elevation varies 7.78m & 8.62m. Rear elevation varies 9.6m & 9.96m.	in average the percentage of variation is 5.76%

- **How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?**

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The court provided five tests as follows that can be used as prompts to answer the above question in relation to your application.

Note: These five tests are not exhaustive of the ways in which you might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. You do not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, you can demonstrate that compliance is unreasonable or unnecessary in more than one way.

Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard:
The objectives of scale, daylight to all adjoining buildings are achieved.

Test 2: The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary:
No impact for loss of view or loss of privacy or overshadowing to adjoining neighbours therefore the compliance is unnecessary.

Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone:
This parcel of land is very steep and it is falling to the rear by more 18% grade, therefore this parcel of land should not be included in the zone.

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

This variation should be accepted for the following reasons :

1- The proposed front elevation height varies between 7.78m & 8.62m and the proposed rear elevation height varies between 9.6m & 9.96m. The average height is 8.99m which is 0.49m higher than the maximum height of 8.5m or 5.76% in percentage.

2-The site is very steep more than 10% in gradient.

3-The proposal comply with all the houses in the area and the over height has no effect on the neighbors .

3- The height of the existing building varies between 9.03m & 11.70m, the average height of the existing building is 10.36m, almost 1.86m above the maximum height of 8.5m or 22% in percentage

4-This variation does not increase the shadowing on the neighbors properties.

5- Lowering the roof is not going to achieve a better development.

It is unreasonable from the council not to approve the development as proposed.

Therefore the contravention must be acceptable and this partial non compliance will not have any adverse impacts on the amenity of adjoining properties in relation to the visual impact or visual intrusion .

- **Is the proposed development, despite the contravention to the development standard, in the public interest?**

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

The partial non compliance does not have an adverse effect on the special ecological, scientific, cultural or aesthetic values of the zone and it allows a scale and nature that maintains the predominantly natural landscape setting of the locality and protects and conserves existing vegetation and other natural features of the locality.

SUMMARY

Although the proposed development does not strictly comply with the numerical prescriptive of " Warringah Local Environmental Plan 2011 " [Clause 4.3 Height of buildings](#), it satisfies the relevant objectives of that development standard as well as the broader planning and zoning objectives as set by the SSLEP2015.

Furthermore, it will not result in any environmental detrimental impact related to the proposed development or adjoining properties, notwithstanding the fact that the proposal satisfies and complies with all the provisions of the Warringah DCP 2011. Compliance with the development standard under clause <https://www.legislation.nsw.gov.au/view/html/inforce/current/epi-2011-0649#sec.4.3> of the Warringah LEP2011 is therefore unnecessary and/or unreasonable in the circumstances of the case, and council consideration of the development application is sincerely appreciated.

Samir Bayeh
96a Hydræ street- Revesby 2212
Mobile :0401 978 404