

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 28 APRIL 2021



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 28 April 2021

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 14 APRIL 2021

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 14 April 2021 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2021/0017 - 36 WEEROONA AVENUE, ELANORA HGHTS - CONSTRUCTION OF A SECONDARY DWELLING
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2021/281033
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council, as the consent authority, **approves** Development Consent to DA2021/0017 for Construction of a secondary dwelling on land at Lot 18 DP 13152, 36 Weeroona Avenue, Elanora Heights, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0017
Responsible Officer:	Brendon Clendenning Creative Planning Solutions Pty Limited
Land to be developed (Address):	36 Weeroona Avenue ELANORA HEIGHTS NSW 2101
Proposed Development:	Construction of a secondary dwelling
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Nick Frank
Applicant:	Nick Frank
Application Lodged:	22/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential – Single new detached dwelling
Notified:	03/02/2021 to 17/02/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$150,000.00

EXECUTIVE SUMMARY

Council is in receipt of development application DA2021/0017 for construction of a secondary dwelling.

The site is zoned E4 Environmental Living under the Pittwater Local Environmental Plan 2014 (PLEP 2014) and the proposed development is permissible with consent.

The initial proposal was non-compliant with the height of buildings development standard, and the design was amended through a reduction in the length of the skillion roof eave overhang. However, this amendment creates a non-compliance with the minimum eave length, and conditions are recommended requiring the initial 450mm eave be to be reinstated, and that the height non-compliance is managed through a reduction in the proposed floor levels.

The proposed building is also provided with limited design modulation, and a condition is recommended requiring an increase in the size of one of the windows which fronts Weeroona Avenue.



Other non-compliances, relating to landscaped area and building envelope provisions were found to be consistent with the objectives of these controls with no unreasonable amenity impacts. The proposal has been found to be contextually compatible with nearby development.

The application was notified in accordance with Council's Community Participation Plan and one (1) submission was received objecting to the application. The issues that have been raised in the submission relate to visual privacy and car parking. The assessment has concluded that the matters raised within the submission does not warrant refusal of the application nor further design amendments.

The submission received was made by an internal staff member involved in providing referrals to planning staff, and has therefore been assessed by an independent consultant town planner and is referred to the Development Determination Panel (DDP) for determination.

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.

Subject to conditions of consent, the consent authority can be satisfied that the proposal is consistent with the aims and objectives of the relevant plans and policies, and the application is recommended for approval.

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.

SITE DESCRIPTION

Property Description:	Lot 18 DP 13152, 36 Weeroona Avenue ELANORA HEIGHTS NSW 2101
Detailed Site Description:	<p>The subject site is located on the northern side of Weeroona Avenue, and has a site area of 1,005m² by title. The land is generally rectangular in shape, except for the 16.165m angled frontage to the street.</p> <p>The site has a front-to-rear fall of approximately 8m that is comparatively steeper toward the front than rear. In the location of the proposed secondary dwelling, a fall of approximately 2.75m occurs across the building footprint.</p>

	<p>The site, along with land to the east, south and west is located within the E4 Environmental Living zone under the PLEP 2014. Land to the north of the site comprises the Elanora Heights Primary School and is zoned SP2 Infrastructure.</p> <p>The site is provided with a generous front setback that is unusual in the locality, with the existing dwelling located towards the rear northern boundary, and a swimming pool located forward of the dwelling, but also within the rear half of the allotment.</p> <p>The site is mapped as being affected by Class 5 acid sulphate soils and Biodiversity under the PLEP 2014, and is also within the coastal environment area per SEPP (Coastal Management) 2019. The site does not contain a heritage item, is not within a heritage conservation area, and not in close proximity to a heritage item.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses amongst relatively dense vegetation cover, typical of the E4 zone. Aside from the neighbouring dwelling to the east, No.38 Weerona Avenue, the majority of other nearby allotments are provided with dwellings which are located far closer to Weerona Avenue than the dwelling at the subject site. As indicated above, the Elanora Heights Primary School is located immediately to the north and is also densely vegetated along its southern boundary.</p>
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SITE HISTORY

- 17 August 2011 – Development Application (N0169/11) approved for construction of a swimming pool and associated decking.
- 23 September 2011 – Construction certificate (CC0359/11) approved for construction of a swimming pool and associated decking.
- 22 August 2019 – Tree Permit (TA2019/0431) approved granting consent for the removal of one (1) tree.
- 22 January 2021 – Subject Development Application (DA2021/0017) lodged.

APPLICATION HISTORY

This application was submitted to Council on 22 January 2021, and Council's consultant planner undertook a site visit on 5 March 2021. A request for information was prepared by the consultant planner on 23 March 2021, and forwarded to the applicant by Council. Issues raised include:

- Building height non-compliance.
- Streetscape and character concerns.
- BASIX commitments not nominated on architectural plans.
- Inconsistent information regarding rainwater tank capacity and location.

Amended plans were received on 29 March 2021.



NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process, Council is in receipt of one (1) submission from:

Name:	Address:
Mr James Brocklebank	34 Weeroona Avenue, ELANORA HEIGHTS NSW 2101

The following matters were raised in the submission and each have been addressed below:

Request for a privacy screen on the western side of the front deck

Comment:

The front porch area sits forward of the building line of the neighbouring dwellings, and therefore no screening is required. The western edge of the rear elevated alfresco deck is located almost 9m from the boundary shared with 34 Weeroona Avenue. In addition, the floor level of the dwelling is over 3m lower than the sill height of the nearest windows on that property. Therefore, privacy screening is not warranted in this instance.

Request for additional parking

Comment:

There is sufficient space within the driveway from Weeroona Avenue to accommodate further informal parking spaces, including an approximately 6m x 4m area located to the side of the primary driveway area.

Concluding Remarks

The matters raised within the submissions have been appropriately addressed above and do not warrant refusal of the application nor further design amendments.

REFERRALS

Internal Referral Body	Comments
Building Assessment	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. 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.
Development Engineer	No objections to approval subject to conditions as recommended.
Landscape Officer	The Arborist's Report submitted with the application is noted. The report concludes that all trees can be retained with an acceptable level of impact, subject to Arboricultural supervision during works. Conditions requiring appointment of a Project Arborist have been included in recommended conditions
Natural Environment	The submitted Arboricultural Impact Assessment (Canopy Consulting 2020) has identified that no trees are required for removal to facilitate

Internal Referral Body	Comments
	the proposed development. As such, the biodiversity referral team are satisfied that the proposed development satisfies the controls listed above, subject to these consent conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	No impact to Ausgrid assets with the proposed alterations.

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

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	None of particular relevance.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<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 conditions 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. Council requested additional information in order to address a potential height non-compliance, improvements to the streetscape presentation, as well as information to address inconsistencies within the submitted plans and documentation. The Applicant provided amended plans which partly responded to the concerns, and design amendment conditions are able to be imposed to address the outstanding matters.</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). No such upgrade is warranted in this instance.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

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 little 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

Division 2: Secondary dwellings

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but only if 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 E4 Environmental Living zone and, as such, this Division does not apply to the development.

Conclusion

As Division 2 does not apply to the E4 zone, no further consideration of SEPP (ARH) 2009 is required.

SEPP (Coastal Management) 2019

13 Development on land within the coastal environment area

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

Comment:

This Clause is relevant to the subject site. The assessment has concluded that the proposal will not require any tree removal, and stormwater can be dispersed on the site through the proposed level spreader, in accordance with the recommendations of the submitted geotechnical report. There is therefore unlikely to be any adverse impact associated with any of the abovementioned matters.

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



- (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

This Clause is relevant to the subject site. Suitable conditions are recommended to ensure that any potential impacts are managed effectively.

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

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

Comment:

The proposed development is unlikely to increase the risk of coastal hazards.

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 indicated that there was no impact associated with the development. No conditions were recommended.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1148205S_02, 23 March 2021). The BASIX Certificate indicates that the development will achieve the following:

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

The plans initially submitted with the application had not shown all BASIX commitments required to be shown with the DA plans. However, this was rectified within the amended plan set.

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

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

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Subclause 4.3(2FA) limits the height of secondary dwellings within the E4 zone to 5.5 metres.

The initial assessment had identified that although the height of the ridge was not nominated on the plans, it was estimated to be approximately RL 60.54. The lowest surveyed existing ground level (existing) in this location is approximately RL 55.00. This gives a total height of 5.54m, which did not comply with the standard.

In response to this issue, the applicant opted to reduce the length of the skillion roof eave overhang from 450mm to 350mm. This change creates a non-compliance with C1.23 of P21 DCP, which requires eaves of a minimum length of 450mm. This change is not supported, noting that the building contains limited design modulation, and that all other eaves within the development are 450mm.

The building floor is raised approximately 400mm above the existing ground level at the entry, and it is therefore possible that the entire building could be lowered to ensure compliance with the height of buildings development standard.

In relation to the discussion above, the following design amendment conditions are recommended:

- *"In order to improve design modulation and consistency, the eave overhang of the skillion which sits above the clerestory windows is to be increased from 350mm to 450mm.*
- *To ensure compliance with the height of buildings development standard is maintained, the entirety of the building, including all floor levels, roof levels, and the like, is to be reduced in height by 130mm".*

The height of the gutter line above the alfresco roof has also not been nominated on the plans; however, it is estimated to be approximately RL 59.35. The lowest surveyed ground level (existing) in this location is approximately RL 54.20. This gives a total height of 5.15m, which complies with the standard.

5.4 Controls relating to miscellaneous permissible uses

The proposed Secondary Dwelling will result in a gross floor area of 59.9m². As such, the proposal achieves compliance with 5.4(9)(a).

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	7.6m	N/A	Yes
Rear building line	6.5m	Unchanged (dwelling located to the rear)	N/A	Yes
Side building line	2.5m (western boundary)	4.5m	N/A	Yes
	1m (eastern boundary)	1m	N/A	Yes
Building envelope	3.5m (western boundary)	3.5m	N/A	Yes
	3.5m (eastern boundary)	4.9m	40%	No
Landscaped Area	60% (603 ²)	Site Area: 1005m ² Landscaped Area: 46.7% Increased to 52.7% when recreation area is included.	12.2%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.5 Elanora Heights Locality	Yes	Yes
B1.3 Heritage Conservation – General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6 Access and Parking	Yes	Yes
B8 Site Works Management	Yes	Yes
C1.1 Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	No	No
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.17 Pollution Control	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)	No	No
D5.2 Scenic Protection - General	Yes	Yes
D5.3 Building colours and materials (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.5 Front building line (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.7 Building envelope (Excluding Elanora Heights Village Centre)	No	Yes
D5.9 Landscaped Area - Environmentally Sensitive Land	No	Yes
D5.13 Construction, retaining walls, terracing and undercroft areas (excluding Elanora Heights Village Centre)	Yes	Yes

Detailed Assessment

D5.7 Building envelope

The proposed development seeks a minor non-compliance with the building envelope requirement along the eastern elevation.

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

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

Comment:

Under Clause A4.5 Elanora Heights Locality of the P21 DCP, the proposed development achieves the desired future character of the locality in that the overall height of the development is well below the existing tree canopy, no native plant species are proposed to be removed and no significant amenity impacts will arise as a result of the proposed development.



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

Comment:

The proposed secondary dwelling is located at the front of the property, but is partly located below street level. As such, there will be minimal impact upon the existing streetscape as a result of the secondary dwelling. Additionally, the development will remain well below the height of the trees within the natural environment.

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

Comment:

No vegetation is required to be removed to facilitate the proposed works. It is considered the development responds to, reinforces and sensitively relates to the spatial characteristics of the existing natural environment.

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

Comment:

The proposal provides a central skillion roof, which pitches up from the front façade. As a consequence, the tallest element of the building aligns along the length of the building, with the height of the building reducing towards the front and rear with the slope of the skillion roof, rather than towards the sides.

In addition, the building is not sited parallel to the side boundaries, but the shortest side setbacks provided are compliant with the side building line. This means that the majority of the building is set back comfortably in excess of the minimum requirements, reducing the apparent bulk and scale of the building.

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

Comment:

The proposed secondary dwelling will not impact upon the views and vistas to and/or from public/private places.

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

Comment:

Given the generous setbacks to all boundaries, it would not be expected that the development would create undue impacts upon the privacy, amenity and solar access to the adjoining properties as a result of this encroachment.

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

Comment:

The proposal is sited as to avoid the need for any tree removal, and this siting partly contributes to the building envelope non-compliance.

While the proposed development is numerically non-compliant with the building envelope, it is considered to be appropriate within the locality and consistent with the objectives of this control. As such, the proposal can be supported on merit, in this instance.

C1.23 Eaves



The design amendments had created a non-compliance by reducing the length of the skillion roof eave overhangs to 350mm, short of the 450mm requirement. However, as indicated earlier, a condition is recommended to require compliant 450mm eaves.

D5.1 Character as viewed from a public place

This part requires that buildings which front the street must have a street presence and incorporate design elements that are compatible with the design themes for the locality.

The front (southern) façade of the proposed secondary dwelling presents with the low end of the skillion roof and contains only a single door and fenestration that is limited to two highlight windows. Although the building will sit partly beneath the street level, given the minimal level of design modulation that is provided, a condition is recommended as follows:

"To improve the street presence of the development, the sill height of W6 to Bed 1 is to be lowered to sit 1200mm above the finished ground floor level, such that the overall height of the window is 900mm".

Subject to compliance with this condition, the design of the building is acceptable.

D5.9 Landscaped Area – Environmentally Sensitive Land

The existing landscaped open space equates to approximately 48.1% (483.2sqm) of the site, which does not meet the required 60% (603sqm). This noncompliance is reduced when recreation areas, equal to 6% of the site area, are added to provide a total of 54.1% landscaped area.

The proposed building would reduce the landscaped area to 53.2%. The proposal building is located centrally within a large landscaped area, and the relatively small proposed building does not therefore interfere with the bushland character of the locality, particularly given that no tree removal is required. Furthermore, the proposal contains a pebbled driveway area of approximately 159sqm, which is permeable but is excluded from the landscaped area calculation. Were this area included, the proposal would be comfortably compliant with the minimum requirement.

Therefore, the existing non-compliance is supported on merit in this particular circumstance.

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.

The application is referred to the Development Determination Panel (DDP) as a submission received was made by an internal staff member involved in providing referrals to planning staff.

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

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



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

It is considered that the 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 DA2021/0017 for construction of a secondary dwelling on land at Lot 18 DP 13152, 36 Weeroona Avenue, ELANORA HEIGHTS subject to the conditions printed below:

CONDITIONS

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 and Roof Plan	22 September 2020	RK Designs
2 - Ground Floor Plan	22 September 2020	RK Designs
3 – North/South/East/West Elevations + Section A-A	22 September 2020	RK Designs
5 – Ground Floor	22 September 2020	RK Designs

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:

Engineering Plans		
Drawing No.	Dated	Prepared By
Stormwater Plan	4 December 2020	Horizon Engineers
Stormwater Details	4 December 2020	Horizon Engineers
RWT/OSD Details	4 December 2020	Horizon Engineers
Ground Floor Timber Joist & Bearer Slab Plan Revision B	4 December 2020	Horizon Engineers

Foundation Details Revision B	4 December 2020	Horizon Engineers
Retaining Wall Details	4 December 2020	Horizon Engineers
Sections	4 December 2020	Horizon Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Report	17 November 2020	Canopy Consulting
Geotechnical Report	11 November 2020	White Geotechnical Group

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	25 November 2020	RK Designs

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

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

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.

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

4. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council



approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

5. Amendments to the approved plans

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

- In order to improve design modulation and consistency, the eave overhang of the skillion, which sits above the clerestory windows is to be increased from 350mm to 450mm.
- To ensure compliance with the height of buildings development standard is maintained, the entirety of the building, including all floor levels, roof levels, and the like, is to be reduced in height by 130mm.
- To improve the street presence of the development, the sill height of W6 to Bed 1 is to be lowered to sit 1200mm above the finished ground floor level, such that the overall height of the window is 900mm.

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.

6. Compliance with Standards

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

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

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

7. 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.

8. 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:



“Tap in” details - see <http://www.sydneywater.com.au/tapin>

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.

9. 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 6/11/2020 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.

10. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

11. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Horizon Engineers, drawing number 169-W20, Sheet 1 to 4, dated 04/12/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. OSD shall be provided in accordance with Council's Water Management for Development Policy Clause 9.0.
- ii. 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.

12. Structural Adequacy and Excavation Work

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

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

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



Reason: To provide public and private safety.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. 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.

14. Temporary Protection Fencing – Exclusion Zones

Prior to the commencement of any works onsite, temporary tree protection fencing is to be erected surrounding areas of retained trees on the site as mapped in the submitted Arboricultural Impact Assessment (Canopy Consulting 2020).

Details demonstrating compliance must be prepared by the Project Arborist and submitted to the Principal Certifying Authority prior to any commencement.

Reason: To protect native vegetation.

15. Tree and vegetation protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation not approved for removal.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 17 November 2020 prepared by Canopy Consulting and Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - 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 the Project Arborist,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with the Project Arborist including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,



x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must:

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment dated 17 November 2020 prepared by Canopy Consulting.

The Certifying Authority must ensure that:

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

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

Reason: tree and vegetation protection.

16. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with THE Arboricultural Impact Assessment dated 17 November 2020 prepared by Canopy Consulting AND Australian Standard 4970-2009 Protection of Trees on Development Sites.

The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

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

All tree protection measures specified must:

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

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

Note: A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: tree protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. 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.

18. 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.

19. Road Reserve

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

Reason: Public safety.

20. Protection of rock and sites of significance

a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

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

21. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title



demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

22. 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. (DACPLF01)

23. 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.

24. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites.

25. Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

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

Reason: To protect wildlife habitat.

26. 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.

27. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

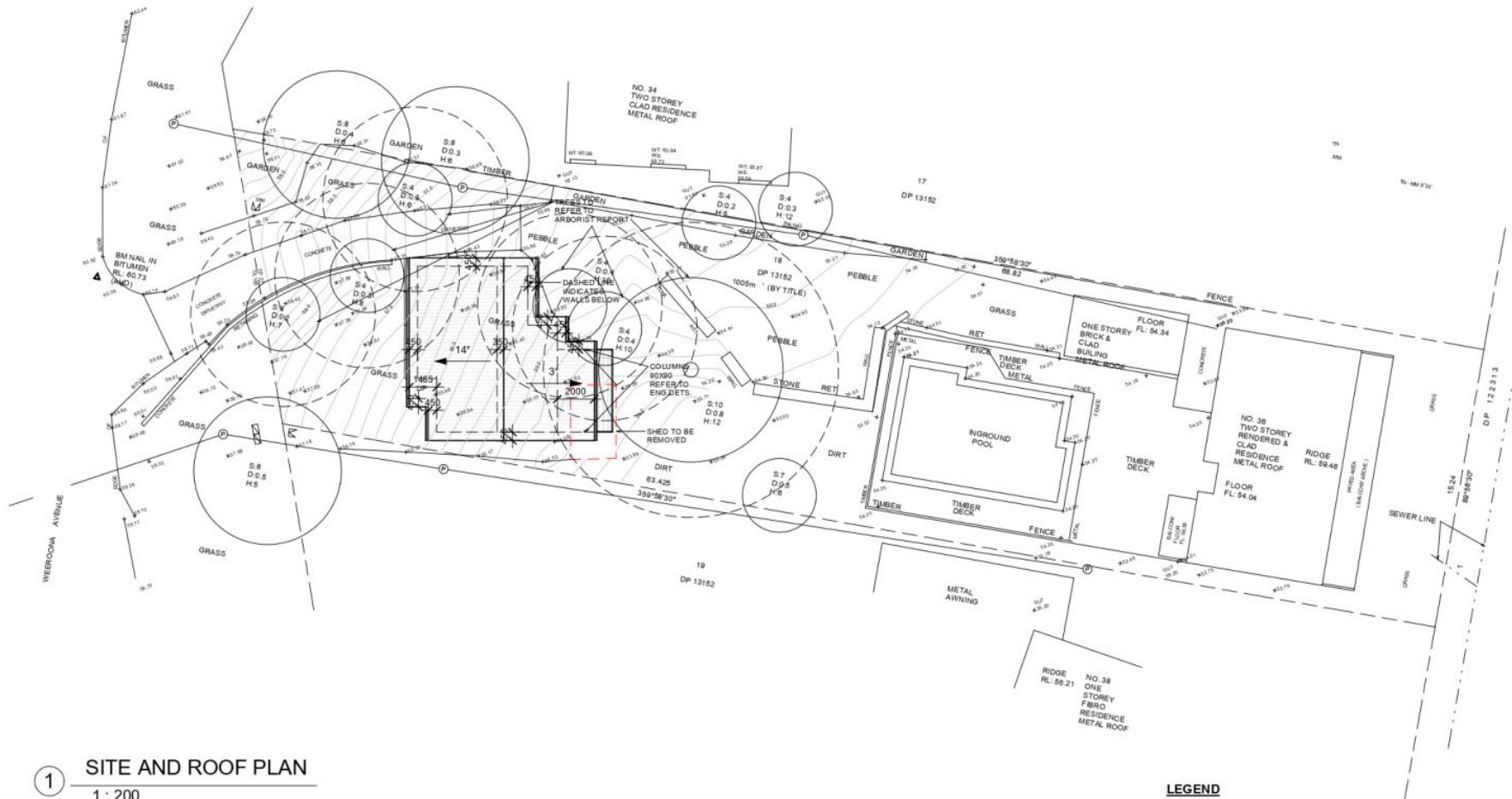
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

28. 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.



1 SITE AND ROOF PLAN
1 : 200

IMPORTANT NOTE
THESE DRAWINGS HAVE BEEN ISSUED FOR DEVELOPMENT APPLICATION PURPOSES ONLY. THEY ARE NOT ISSUED FOR CONSTRUCTION OR CONSTRUCTION CERTIFICATE OR FOR THE PURPOSES OF PRICING BY ANY CONTRACTOR

LEGEND

FLOOR WASTE



SMOKE ALARM



(HARD WIRED PHOTO-ELECTRIC SMOKE ALARMS TO BE INSTALLED IN ACCORDANCE WITH NCC PART 3.7.5 & AS 3786)



GENERAL NOTES

All dimensions are to be confirmed on site by the builder/subcontractor. Any incongruities must be reported to the Designer before commencement of any work. No Survey has been made on the boundaries. All bearings, distances and areas have been taken from the contour survey plan. A Survey must be carried out to confirm the exact boundary locations.
No construction work shall commence until a site survey confirming the site boundaries has been completed. The contractor is to ensure that the boundary setbacks are confirmed and used. The boundary setbacks take precedence over all other dimensions. The Survey work must be performed by a registered Surveyor. In the event of encountering any discrepancies on these drawings, specification or subsequent instructions issued, the Builder/Subcontractor shall contact the designer before proceeding further with any work.
All construction, control joints and expansion joints in the wall, floors, other locations shall be in strict accordance with the Structural Engineering details. No joints or breaks other than specified, are allowed without written permission from the Engineer.
Measurements for the fabrication of secondary components such as, windows, doors, internal frames, structural steel components and the like, are not to be taken from these documents. Measurements must be taken on site to suit the work as constructed.
All structural components shall be in strict accordance to details and specifications as prepared by a structural engineer.
All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

drawn	date	issue	amendment
EC	22/09/20	A	ISSUE FOR DA
EC	23/03/21	B	REVISED FOR DA

project
PROPOSED CONSTRUCTION OF A GRANNY FLAT AT 36
WEEROONA AVENUE ELANORA HEIGHTS 2101 NSW
LOT 18 DP 13152

client
NIK AND MARIA FRANK



drawing
SITE AND ROOF PLAN

project no
20-71

date
22/09/20

sheet no
1

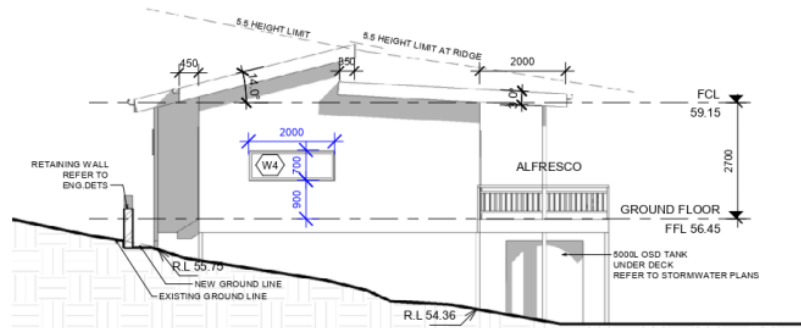
scale
@ A3 issue

drawn
RK

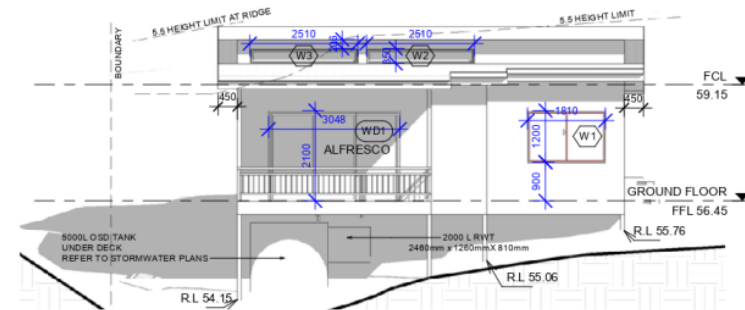


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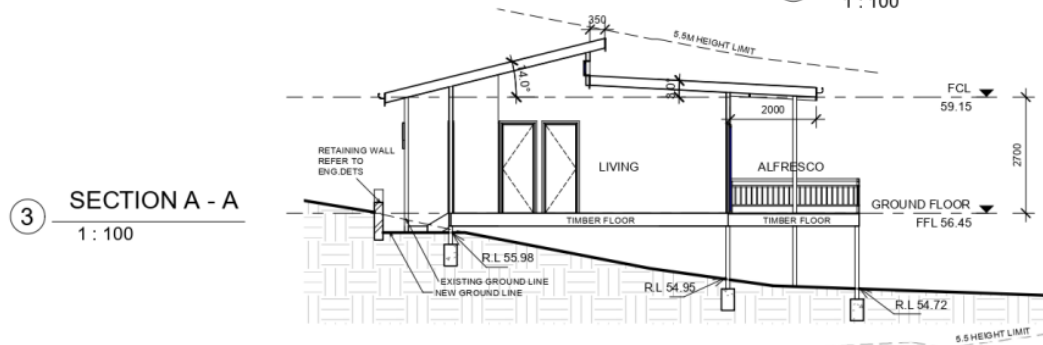




1 EAST ELEVATION
1 : 100

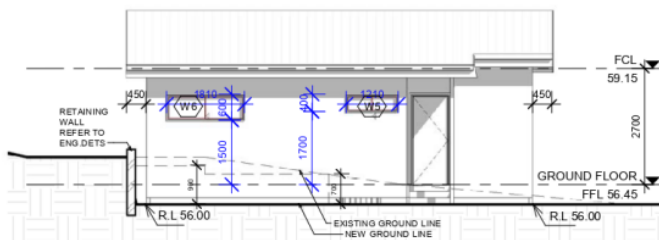


2 NORTH ELEVATION
1 : 100

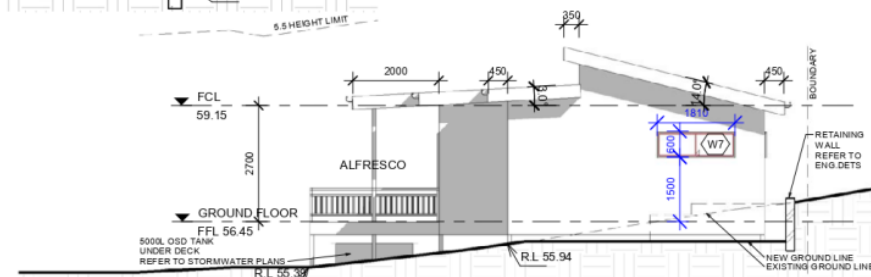


3 SECTION A - A
1 : 100

IMPORTANT NOTE
THESE DRAWINGS HAVE BEEN ISSUED FOR
DEVELOPMENT APPLICATION PURPOSES ONLY.
THEY ARE NOT ISSUED FOR CONSTRUCTION OR
CONSTRUCTION CERTIFICATE OR FOR THE
PURPOSES OF PRICING BY ANY CONTRACTOR



4 SOUTH ELEVATION
1 : 100



5 WEST ELEVATION
1 : 100

GENERAL NOTES
All dimensions are to be confirmed on site by the builder/subcontractor, any incongruities must be reported to the Designer before commencement of any work.
No Survey has been made on the boundaries, all bearings, distances and areas have been taken from the contour survey plan. A Survey must be carried out to confirm the exact boundary locations.
No construction work shall commence until a site survey confirming the site boundaries has been completed. The contractor is to ensure that the boundary setbacks are confirmed and used, the boundary setbacks take precedence over all other dimensions. The survey work must be performed by a registered Surveyor.
In the event of encountering any discrepancies on these drawings, specification or subsequent instructions issued, the Builder/Subcontractor shall contact the Designer before proceeding further with any work.
All construction, control joints and expansion joints in the wall, floors, other locations shall be in strict accordance with the Structural Engineering details. No joints or breaks other than specified, are allowed without written permission from the Engineer.
Measurements for the fabrication of secondary components such as, windows, doors, internal frames, structural steel components and the like, are not to be taken from these documents. Measurements must be taken on site to suit the work as constructed.
All structural components shall be in strict accordance to details and specifications as prepared by a structural engineer.
All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

drawn	date	issue	amendment
EC	22/09/20	A	ISSUE FOR DA
EC	23/03/21	B	REVISED FOR DA

project
**PROPOSED CONSTRUCTION OF A GRANNY FLAT AT 36
WEEROONA AVENUE ELANORA HEIGHTS 2101 NSW
LOT 18 DP 13152**

client
NIK AND MARIA FRANK



drawing
ELEVATIONS AND SECTION

project no	date	sheet no.	scale	@ A3 issue	drawn
20-71	22/09/20	3	1 : 100	B	RK



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**RK
DESIGNS**

ITEM 3.2	DA2020/1621 - 62 CASTLE CIRCUIT, SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2021/281108
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 DA2020/1621 for alterations and additions to a dwelling house on land at Lot 51 DP 200638, 62 Castle Circuit, Seaforth, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1621
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Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 51 DP 200638, 62 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:	Sharleen Jane Allen
Applicant:	Sam Allen

Application Lodged:	19/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/01/2021 to 26/01/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 48,000.00
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This report involves consideration for the demolition works and the construction of a new decking area along the southern and western elevations of the dwelling house at 62 Castle Circuit Seaforth.

The site is a large (1062.3m²) parcel of land, which is densely vegetated for the majority of the site and steeply sloping, having a fall of 10m from the top to bottom, where the site is bordered by Castle Circuit Reserve, continuing down to Middle Harbour.

The subject site is Bush Fire affected. As a result of the proposal, the NSW Rural Fire Service requires the entire site to be managed as an Inner Protection Area (IPA) Asset Protection Zone (APZ).

The Bushfire report concludes that the proposed vegetation removal is satisfactory to achieve APZ requirements in line with RFS recommendations.

Council's Biodiversity and Landscape referrals team are satisfied that the proposed development and

associated APZ comply with relevant biodiversity and provisions.

The proposal is permissible with consent in the R2 Low Density Residential zone under Manly Local Environmental Plan 2013. The proposal does not comply with the building height development standard of 8.5m under the LEP at 10.4m (22.3% variation). Therefore, the applicant has lodged a request under Clause 4.6 to vary the standard.

Having regard to the steepness of the site, the non-compliance is largely unavoidable and the design response displays a minimisation of impact of natural features of the site and there are no unreasonable impacts on adjoining or nearby properties. The application has demonstrated that compliance with the height standard is unreasonable, for the reasons detailed in this report, therefore, the Clause 4.6 variation is supported.

The proposal involves minor variations to the built form controls under the Manly Development Control Plan 2013 in relation to the front and side setbacks. The variations were found to be generally consistent with the relevant objectives and requirements. In this regard, the proposal will not detrimentally impact on the amenity of neighbouring properties, the streetscape or the character of the area.

The proposed development was notified and no submissions were received.

The proposed redevelopment represents an improved built form on the site and is compatible and consistent with surrounding residential developments.

The application is recommended for approval subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

This proposal seeks approval for the construction a new elevated open style deck along a portion of the western and southern elevations of the existing dwelling house.

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 - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 51 DP 200638 , 62 Castle Circuit SEAFORTH NSW 2092
Detailed Site Description:	<p>The site is legally identified as Lot 51 within DP 200638 and known as 62 Castle Circuit Seaforth. The site is located within the R2 Low Density Residential zone, as mapped within the Manly Local Environment Plan 2013.</p> <p>The site is an irregular shaped allotment with a size area of 1,062.3m².</p> <p>The subject site is on a very steep slope within a gully. The development of the subject site has altered the surface base of the gully due to the installation of a stormwater easement and large stormwater pipe. The existing dwelling house is suspended very high above the slope on timber posts, with an existing rock outcrop located below the dwelling.</p> <p>The subject site is located within a Bush Fire zone, and has significant vegetation and canopy trees and environment features such as rock outcrops within the site.</p> <p>The subject site also adjoins Castle Circuit Reserve, with Middle Harbour being located towards the west.</p> <p>The current dwelling house consists of a two bedroom dwelling houses, with no vehicle access due to the significant slope. Entry to the dwelling house is via an elevated decked path from Castle Circuit Parade.</p> <p>Surrounding dwellings consist of one, two and three stories, of varying ages, within a landscaped setting.</p>

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional</p>

Section 4.15 Matters for Consideration'	Comments
	<p>information such as an Arborist Report, and Bush Fire Addendum was requested as a result of the NSW RFS referral response.</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 Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/01/2021 to 26/01/2021 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is for alterations and additions to an existing dwelling to provide a new deck along the western and southern elevations.</p> <p>Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan, and against the following landscape controls of Manly DCP 2013 (but not limited to):</p> <ul style="list-style-type: none"> • section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation, • section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping. <p>There is no reduction in the existing open space nor the soft landscaped area from the above ground proposed deck. The Statement of Environmental Effects notes that no vegetation removal is required. The land is identified as bushfire prone land and therefore the provisions of Planning for Bushfire Protection 2019 apply.</p> <p>An Arboricultural Impact Assessment is provided with the recommendations to remove a total of two prescribed <i>Cyathea cooperi</i> fern trees, identified as tree numbers 23 and 24 (ie. protected under Manly DCP) located within the footprint of the proposed deck. These two fern trees are assessed with low significance and without a design alternative for retention, removal is acceptable. Additionally nine (9) Exempt Species are identified and recommended for removal and are not subject to Council consent for removal or pruning works, including trees identified as tree numbers 1, 2, 11, 12, 13, 15, 17 and 18. All apart from tree number 2 are environmental weeds (Privet) that shall be removed.</p> <p>Landscape Referral raise no objections to the proposal subject to the inclusion of conditions of consent.</p>
NECC (Bushland and Biodiversity)	Updated Biodiversity Comments (12th April 2021)

Internal Referral Body	Comments
	<p>Council's biodiversity referrals team have reviewed the additional documentation provided by the applicant, including:</p> <ul style="list-style-type: none"> • Bushfire Risk Assessment (Ron Coffee 6th April 2021) • Arboricultural Impact Appraisal and Method Statement (Naturally Trees 31st March 2021) <p>The Arborist report concludes that eleven (11) trees are required to be removed for the proposed development, two (2) of which are prescribed trees (<i>Cyathea cooperi</i>) which are located within the footprint of the proposed deck. The other nine (9) trees are exempt due to the size or species, and require removal in order to establish the Asset Protection Zone (APZ). The Bushfire report concludes that the proposed vegetation removal is satisfactory to achieve APZ requirements in line with RFS recommendations.</p> <p>From the supporting evidence, it is clear that the applicant has aimed to reduce impacts on local biodiversity by selecting environmental weeds as a priority for removal and retaining native species where possible. As such, additional documentation including an Ecological Impact Assessment as originally requested, is not required. Subject to these conditions of consent, Council's biodiversity referrals team are satisfied that the proposed development and associated APZ comply with relevant biodiversity provisions.</p> <p>Original Biodiversity Comments (11th March 2021)</p> <p>Council's biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions:</p> <ul style="list-style-type: none"> • Manly LEP cl. 6.5 Terrestrial Biodiversity • State Environmental Planning Policy (Coastal Management) 2018 cl. 13 Development on land within the coastal environment area <p>The Development Application is for construction of a new deck along a portion of the western and southern elevations. Whilst no vegetation removal is required to facilitate the construction of the deck, the designation of the entire property as an Asset Protection Zone (APZ) and further classification as an Inner Protection Area (IPA) by the NSW RFS, will likely result in a substantial amount of vegetation (including trees) requiring removal.</p> <p>It is recommended that the Bushfire Consultant work closely with a suitably qualified Arborist and Ecologist to determine the vegetation required for removal in order to meet the minimum IPA requirements. Removal of vegetation required for the IPA will then need to be assessed by an Ecologist and included in a revised</p>

Internal Referral Body	Comments
	application for assessment by Council's Biodiversity Officer.

External Referral Body	Comments
NSW Rural Fire Service – local branch (s4.14 EPAA)	The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority to Council on the 9 February 2021, with support for the proposal subject to conditions. The recommendations of the Bush Fire Reports, Arborist Report along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions 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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2 (aims of the SREP), Clause 13 (Sydney Harbour Catchment), Clause 14 (Foreshores and Waterways Area), Clause 21 (Biodiversity, ecology and environmental protection), Clause 22 (Public access to and use of foreshores and waterways), Clause 25 (Foreshore and waterways scenic quality) and Clause 26 (Maintenance, protection and enhancement of views) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed works, referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Coastal Management) 2018

Portions of the site are located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Therefore, provisions of this policy are applicable in relation to the proposal.

Following detailed assessment of the development, Council can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP, the proposal is not likely to cause increased risk of coastal hazards on the site or other land as listed in clause 15 of the CM SEPP.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	4.3m - 10.4m Deck (including balustrade) 3.3m - 9.4m Deck (without balustrade)	up to 22.3% up to 10.5%	No No
Floor Space Ratio	FSR: 0.4:1	No Change	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes

Clause	Compliance with Requirements
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.4m (including balustrade)
Percentage variation to requirement:	22.3%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,

- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *The proposal provides for additions to an existing dwelling. The site has a significant slope and the existing dwelling is elevated well above existing*
- *ground level.*
- *Similarly, the proposed development will provide for improved amenity for the residents by locating private open space adjacent to the internal living areas.*
- *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.*

Therefore the applicants written request argues, in part:

- The proposed breach relates to the steep topography of the site;
- The proposed breach does not result in any unreasonable overshadowing of adjoining properties;
- The proposed breach does not result in any view loss impacts from the public domain;
- The proposed breach does not result in any loss of privacy for neighbouring properties;
- The proposed breach does not result in any adverse visual impact given the overall improved articulated nature of the dwelling, and due to the dense vegetation to remain within and surrounding the site;
- The proposed breach does not detract from compliance with the R2 Low Density Residential Zone objectives.

In the circumstances of the steep site conditions and the existence of important environmental features, variation of the development standard of 8.5m, while continuing to allow for a recreational deck area that adjoins the existing dwelling house, that limits the excavation of the site to protect significant environmental rock outcrops, is not considered unreasonable. The overall height of the proposed decking is mimics the existing floor level of the one storey elevated dwelling house, thereby minimising the any potential bulk and scale impact caused by the overall building height.

It is agreed that the breach is largely unavoidable due to the considerable slope of the land, the existing floor level of the dwelling house and that the non-compliance will not result in any unreasonable impacts to any surrounding 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 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 development is for the construction of a new recreational deck area on the southern and western elevations of the existing dwelling house. The dwelling house is currently located on a very steep slope, within a valley, suspended on timber poles. The over height of the existing dwelling house is 12.3m, minimised by the use of a flat roof design. The proposed deck will mimic the existing floor level of the dwelling house, at RL26.97, with the height variation corresponding to the changing slope of the land. See Figure 1, 2 & 3 below.

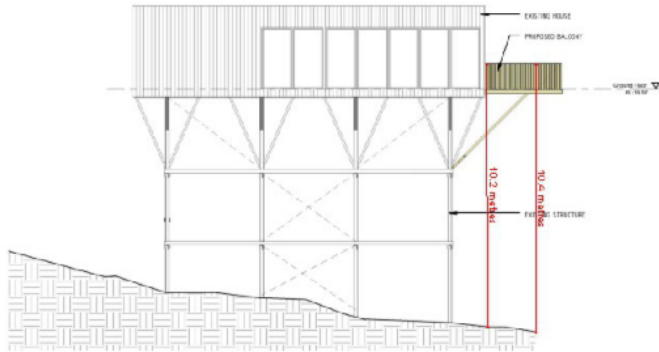


Figure 1: Proposed deck height variation on the north elevation.

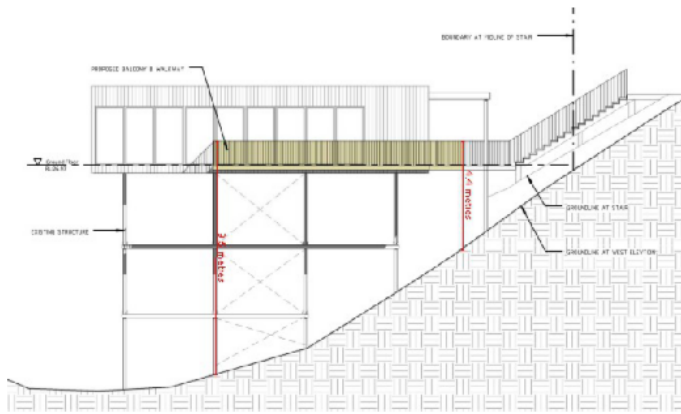


Figure 2: Proposed deck height variation on the west elevation.

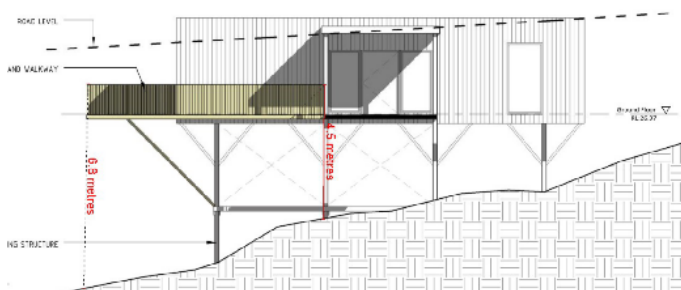


Figure 3: Proposed deck height variation on the south elevation.

The proposed deck building height reflects the established built form character of the immediate Seaforth Crescent area where multi-level, and non-complying building heights are prevalent due to the steep topography of the land and difficulty with pedestrian and vehicular access.

As such, despite the non-compliance with the height of building development standard, the proposed development is consistent with, and complementary to existing development in the locality, particularly in relation to height and character.

The development satisfies this objective.

b) to control the bulk and scale of buildings,

Comment:

The existing dwelling house and proposed decking area breaches the maximum roof height control with the MDCP 2013. However, the proposed development is compliant with the floor space ratio set by the MLEP 2013, which controls bulk and scale.

The additional area of building height non-compliance is located at the south and western edge of the dwelling house, with the decking area being relatively minor in size.

The bulk and scale proposed development will continue to be a similar representation of the existing one (1) storey elevated development when viewed from properties to the north, east and south, as demonstrated in Figure 1, 2 and 3 above.

Therefore, due to the topography of the site, the variety of built forms along Seaforth Crescent, and the similarity of the bulk and scale to the existing dwelling house, the impact of the non-compliance is considered to be relatively minor and does not unreasonably conflict with the height and the scale of surrounding and nearby development. In this context, the proposed height is considered to be compatible.

The development satisfies this objective.

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:

It is acknowledged that the non-compliance along the south and western elevation of the dwelling house do not impact the viewing angle from the properties to the north, No.66 or No.68 Seaforth Crescent, to the east No. 64 Seaforth Crescent or the the south No.71 or No.73 Seaforth Crescent.

The range of views available from the internal areas and external areas of all surrounding properties will remain intact.

The height non-compliance does not have an unreasonable impact upon the existing views from the opposite side of Seaforth Crescent due to the higher placement/vantage point of these properties.

Therefore, the height non-compliance does not result in any loss of views to, from, or between public or private spaces.

The development satisfies this objective.

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

Comment:

The proposed deck area will not cast any additional shadow over any neighbouring property between 9.00am and 12.30pm on 21 June.

Given the finding in this clause, the development satisfies this objective.

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

Comment:

The proposal is designed to maintain the topographical features of the site by not excavating into the significant rock outcrops that exist on the site.

The proposals open style balcony area, provides an improvement of the box like design of the existing dwelling house, especially when viewed from neighbouring properties. The proposal reflects the established built form character of the immediate Castle Crescent area where multi-level, variable stepped houses are prevalent, due to the steep topography of the land and difficulty with pedestrian and vehicular access.

The Arborist report concludes that eleven (11) trees are required to be removed for the proposed development, two (2) are prescribed trees (*Cyathea cooperi*) which are located within the footprint of the proposed deck. The other nine (9) trees are exempt due to the size or species, and require removal in order to establish the Inner Protection Area (IPA) as required by the NSW Rural Fire Service. The remaining extensive existing landscaping will be retained and will soften and filter the built form. Therefore, the proposal will be sufficiently softened by the existing landscaped setting.

The development satisfies this objective.

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 maintains the residential use of the site and therefore continues to contribute to providing housing needs for the community.

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 actually improve the livability for the occupants by providing a private open space area adjoining the dwelling house. As a result, the proposal involves a residential land use which is appropriate for the zone.

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:

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).

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1062.3sqm	Requirement	Proposed	% Variation*	Complies
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	5.265m - 8.715m	up to 12.25%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	Western side boundary 2.66m (based on wall height 8m)	1.98m - 2.7m	up to 25.6%	No
4.1.4.4 Rear Setbacks	8m	14.8m	-	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	6m (common boundary)	1.98m - 2.7m	up to 25.6%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (637.38sqm)	75.2% (804.4sqm)	-	Yes
	Open space above ground 25% of total open space 37.9	4.7% (37.9sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (254.96sqm)	100% (804.4sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	> 18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces	-	No (existing)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The DCP requirements and objectives, pursuant to Clause 3.1.1 Streetscape (Residential area), including sections 3.1.1.1 to 3.1.1.5, are addressed as follows:

- The proposal is required to be consistent with Complementary Design and Visual Improvement design outcomes including streetscape considerations for setbacks, materials and built form. As outlined in the built form controls table, the open style deck area is consistent with the DCP

requirements and have acceptable materials in conjunction with providing fenestration in the wall planes to address visual impact on the street and adjacent land.

- The retaining of extensive existing landscaping, window fenestration and other elements (such as the deck, and new openings) assist to ensure no unreasonable impacts of bulk. The building does however include decking elements that extend / protrude into the streetscape setback areas that are inconsistent with objectives of the control. However, the open style deck elevated open space does not dominate public space of the street boundary /setback area and actually complements the existing character of the dwelling house.
- The Castle Circuit streetscape is also characterised by sloping natural topography either side of the road. In consideration of the Castle Circuit frontage the building has a lower profile, with the flat roofline being mainly visible from the street frontage, see photo 1 below. As a result, the proposed decking when viewed from Castle Circuit is lower than adjacent houses on the same side of the road as the subject site minimising and unreasonable impact on surrounding land and is consistent with the pattern of surrounding development on similar sloping positions.



Photo 1: View of the existing dwelling house from the Seaforth Crescent street frontage.

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

3.4.2 Privacy and Security

The proposal involves a significantly elevated balcony on the southern and western elevation that could cause an unreasonable impact on privacy. However, due to the size, orientation and design of the decking there is no unreasonable overlooking created from this new private open space area.

However, due to the significant elevation a merit assessment has been undertaken below.

Merit consideration:

The development is considered against the objectives of the clause as follows:

- **To minimise loss of privacy to adjacent and nearby development by:**

appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and

mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.

Comment:

The proposal involves a new decking area adjoining the elevated ground floor level of the existing dwelling house, on the southern and eastern elevation only. As a result, the proposed decking should not result in unacceptable privacy impact for the neighbouring properties due to the distance from neighbouring properties, the size of the decking area, and orientation directly toward the Castle Circuit street and Middle Harbour. As a result, the design demonstrates a good balance between acoustical and visual privacy, particularly in terms of the relationship between living areas and private open space.

As such, the proposal meets this objective.

- ***To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.***

Comment:

The proposed western decking area is orientated toward the Middle Harbour water views, with the decking on the southern elevation facing the Castle Circuit street. As a result, the location and orientation of the proposed decking away from the the living spaces of any neighbouring property results in a reasonable balance with no unreasonable negative impacts on the amenity of the occupants, nor neighbouring sites.

- ***To encourage awareness of neighbourhood security.***

Comment:

The proposal provides appropriate openings so as to encourage awareness of neighbourhood security.

The proposal meets this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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

Applicable Clauses

Clause 4.1.4.1 - Street Front Setbacks.

Clause 4.1.4.2 - Side Setbacks and Secondary Street Frontages.

Clause 4.1.4.6 - Setback for Development Adjacent to LEP Zones RE1, RE2, E1 and E2.

Description of non-compliance

Clause 4.1.4.1 - Street Front Setbacks

Clause 4.1.4.1 requires development to provide a front setback of 6.0m.

The development provides a front setback of between 5.265m to 8.715m to Castle Circuit which represents a variation of up to 12.25%.

Clause 4.1.4.2 - Side Setbacks and Secondary Street Frontages

Clause 4.1.4.2 requires development to provide variable side setbacks based on the proposed wall height. Whilst no wall height is proposed, the maximum compliant wall height for the subject site is 8m, as a result the setback based on this wall height is 2.66m.

In this respect, the development provides the following side setbacks to the western elevation of 1.98m - 2.7m which represents a variation of up to 25.6%.

Clause 4.1.4.6 - Setback for Development Adjacent to LEP Zones RE1, RE2, E1 and E2

Clause 4.1.4.6 requires development to provide a setback of 6.0m to the adjacent Castle Circuit Reserve (which is zoned E2).

In this respect, the development provides the following side setbacks to the western elevation of 1.98m - 2.7m which represents a variation of up to 25.6%.

Merit consideration

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

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

Comment:

The front setback non-compliance of the deck area is located at the southern corner of the proposed decking area, closest to the existing elevated pedestrian access. The proposed deck within the front setback is sited approximately 3m below the street level of Castle Circuit.

The setbacks are reliant on the existing wall alignment of the elevated dwelling house, with the new balcony (wrap around section) being compliant with the front setback requirement at 8.715m. The new area of private open space is in keeping with the pattern of the principal open space in the surrounding area, with landscaped areas retained to provide visual interest and amenity to the dwelling house.

A submitted Arborist report concludes that eleven (11) trees are required to be removed for the proposed development, two (2) are prescribed trees (*Cyathea cooperi*) located within the footprint of the proposed deck. The other nine (9) trees are exempt due to the size or species, and require removal in order to establish the Inner Protection Area (IPA) Asset Protection Zone (APZ) required by the NSW Rural Fire Service.

Councils Biodiversity Officers conclude the applicant has aimed to reduce impacts on local biodiversity by selecting environmental weeds as a priority for removal and retaining native species where possible. As a result, the front setback area between the proposed deck and the front boundary will be sufficiently landscaped such that the landscape character of the street will be preserved.

Similarly, the open style decking proposal with respect to the side boundary setbacks (and the setback to the Castle Circuit Reserve) provides desired spatial proportions to respond to the landscape character of the reserve.

The development satisfies this objective.

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

Comment:

The separation of the built forms enable the development to satisfactorily respond to this objective because:

The balcony is located on the southern and western elevations such that direct overlooking is avoided thereby providing privacy.

The required tree removal to ensure compliance with the IPA APZ will not create any additional privacy impacts to neighbouring sites.

The open style decking provides equitable access to light, sunshine and air movement through the site with no impact to the neighbouring private and public properties.

The open style decking and chosen location facilitates view sharing and limit impacts on views and vistas from private and public spaces.

The unique dwelling house, significantly elevated by timber poles, requires the new decking area to be significantly elevated to mimic the existing floor levels. The chosen location and open design, together with the offset levels to the Castle Circuit street level adds to the character of the streetscape and creates a rhythm of spaces when viewed from the neighbouring private and public properties.

There is no change to the current car parking arrangement along Castle Circuit.

The development satisfies this objective.

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

Comment:

The proposed setbacks are reflective of the existing format of the development and its attempt to respond to the topographical constraints of the site. In this way, the development adopts a high level of flexibility in the siting of the buildings to preserve the natural features of the site and its relationship to its surrounds.

The development satisfies this objective.

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

Comment

The open style decking format enables the development to satisfactorily respond to this objective because:

The chosen location of the open style decking on the southern and western elevation enables the retention and provision of consolidated deep soil zones which accommodate appropriate plantings including native vegetation and native trees.

The spatial arrangement of the development, combined with the NSW Rural Fire Service requirements of the subject site to be managed as an Inner Protection Area (IPA) enables the retention of existing canopy trees, and vegetation ensures that a satisfactory landscape transition is provided at the interface with the Castle Circuit Reserve as shown in Photo 2 below.



Photo 2: *The existing landscape interface between the subject site and Castle Circuit Reserve.*

Council's biodiversity referrals team are satisfied that the proposed development and associated APZ comply with relevant biodiversity provisions including the provisions of State Environmental Planning Policy No 19 - Urban Bushland.

The development satisfies this objective.

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

Comment:

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority to Council on the 9 February 2021, with support for the proposal subject to conditions that the entire site be managed as an Inner Protection Area (IPA) Asset Management Zone (AMZ).

As a result of the NSW Rural Fire Service requirements, further information was received in regards to the required vegetation to be removed. A new Bushfire Addendum and Arborist Report was submitted to demonstrate the vegetation required for removal in order to meet the minimum IPA requirements. The Arborist Report identifies even (11) trees to be removed for the proposed development, two (2) are prescribed trees (*Cyathea cooperi*) located within the footprint of the proposed deck. The other nine (9) trees are exempt due to the size or species. Therefore the Arborist Report, and Bushfire Addendum concludes that the proposed vegetation removal is satisfactory to achieve APZ requirements in line with NSW Rural Bush Fire Service recommendations.

The recommendations of the Bush Fire Report and Arborist Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions of consent.

The development satisfies this objective.

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

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

Schedule 3 of the MDCP 2013 requires two (2) parking spaces to be provided for semi-detached dwellings. The subject site does not currently provide any off-street parking, with pedestrian access provided by elevated external stairs within the road reserve. The proposed development provides no parking spaces within the site.

The provision of off-street parking would be unsuitable due to the significant sloping topography of the site, particularly within the site frontage. It is noted that Castle Circuit has sufficient capacity to accommodate for two vehicles on the street. Given the proposal is not intensifying the use of the site, the existing non-compliance is acceptable.

4.1.8 Development on Sloping Sites

The subject site is highly irregular in shape and has a fall of over approximately 10m from the front boundary of the subject site to the gully at the lowest point on the subject site. However, the decking proposal is to be constructed at the existing floor level of the dwelling house. The design of the dwelling house, on timber poles minimises site disturbance by elevating the dwelling house over the and the existing rock face to ensure there is minimal loss of significant naturally features (rock outcrops) and

natural vegetation in accordance with the requirements of the NSW Rural Fire Service for the site to be managed as an Inner Protection Area (IPA).

The proposal is for relatively minor alterations and additions in terms of changes to the visible built form. The new proposed decking along the southern and western elevations provides additional articulation with high quality natural materials and open balustrading that minimise the visual bulk and scale of the dwelling. The overall external shape and height of the building will not be dramatically altered, and the bulk and scale of the building will remain largely consistent with what already exists on site, which is largely consistent with surrounding development in terms of bulk and scale.

The application is also supported by a Preliminary Geotechnical Assessment prepared by White Geotechnical Group, Report Number J2677, dated 15 December 2020. This report and its recommendations are included within the conditions to ensure there is no adverse impacts resulting from the proposed construction.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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

This report provides a detailed assessment of the Development Application for alterations and additions at 62 Castle Circuit, Seaforth.

Public Exhibition

The public exhibition of the application resulted in no submissions.

Referrals

The application was referred to the NSW Rural Fire Service external authority and there were no objections raised subject to conditions.

The removal and management of the trees and understory on the subject site as detailed by the Arborist Report, provides an appropriate balance between the NSW Rural Fire Service recommendations, the Manly Local Environment Plan, and the landscape and biodiversity controls of Manly DCP 2013.

Council's Biodiversity and Landscape referrals team are satisfied that the proposed development and associated APZ comply with relevant biodiversity and provisions.

Assessment of the Proposal

The assessment of the proposed development against the provisions of MLEP 2013 found that the proposal does not comply with the 'Height of Buildings' Development Standard under the MLEP 2013 which permits a maximum building height of 8.5m within the R2 Low Density residential zone.

In this case, the non-compliance created by the new decking is up to 10.4m (including balustrading) with a variation of 22.3%.

The non-compliance is largely unavoidable due to the steep slope of the site, the existing floor levels of the dwelling house and the need to avoid unreasonable impacts on the natural features of the site.

The applicant has provided sufficient justification for the departure from the development standard in that compliance with the standard is unreasonable in the circumstances of this highly constrained site and the encroachment does not result in any unreasonable impacts to surrounding residential properties.

In addition, the assessment of the proposed development against the provisions of the Manly DCP 2013 has found that the proposal does not comply with the side boundary setback and front boundary setback. Given the constraints on the development by virtue of the escarpment location and the presence of significant environmental features, some flexibility in applying these controls is necessary. There will not be any unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the vegetated character of Castle Circuit and the Locality.

The application as conditioned has adequately addressed the concerns raised and is therefore recommended for approval subject to conditions.

Recommendation - 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 DA2020/1621 for Alterations and additions to a dwelling house on land at Lot 51 DP 200638, 62 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
Site Plan A01	01/12/2020	Scope Architects
Ground Floor Plan A02	01/02/2020	Scope Architects
West Elevation A03	01/02/2020	Scope Architects
North Elevation A04	01/02/2020	Scope Architects
Elevations (East/South) A05	01/02/2020	Scope Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Risk Report	13/11/2020	R Coffey
Bushfire Risk Report Addendum	06/04/2021	R Coffey
Arboricultural Impact Appraisal and Method Statement	31/03/2021	Naturally Trees
Preliminary Geotechnical Assessment	15/12/2020	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. **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	Response NSW Rural Fire Service	9 February 2021
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(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. Security Bond

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. 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.

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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

8. **Tree Removal within the Property**

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

- i) tree 23 *Cyathea cooperi* (Tree Fern)
- ii) tree 24 *Cyathea cooperi* (Tree Fern)

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised building works.

9. **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.

10. **Clearing for Asset Protection Zones**

Clearing of vegetation during works for APZ establishment must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be submitted to the Principal Certifying Authority.

Reason: To protect native vegetation and wildlife.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) 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.

12. **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.

13. **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

14. Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

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

Reason: To protect wildlife habitat.

15. Vegetation Clearing Protocols

Clearing of vegetation is to be undertaken in accordance with the protocols and recommendations specified in the approved Arboricultural Impact Assessment report as outlined in Appendix 7 (Naturally Trees 2021).

Written certification of compliance is to be prepared by the Project Arborist and submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect native vegetation.

16. 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.

17. Waste Management Confirmation

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

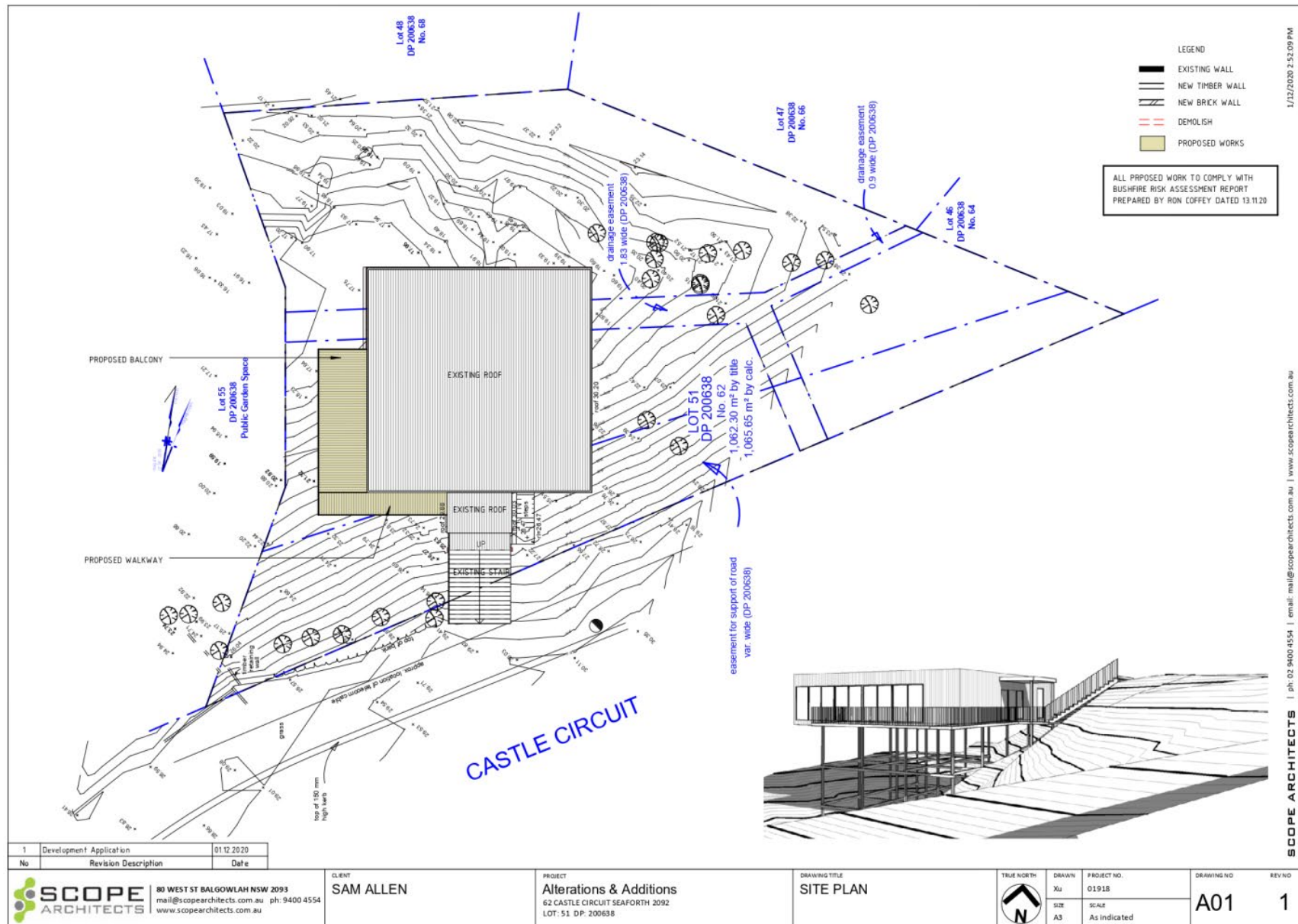
Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

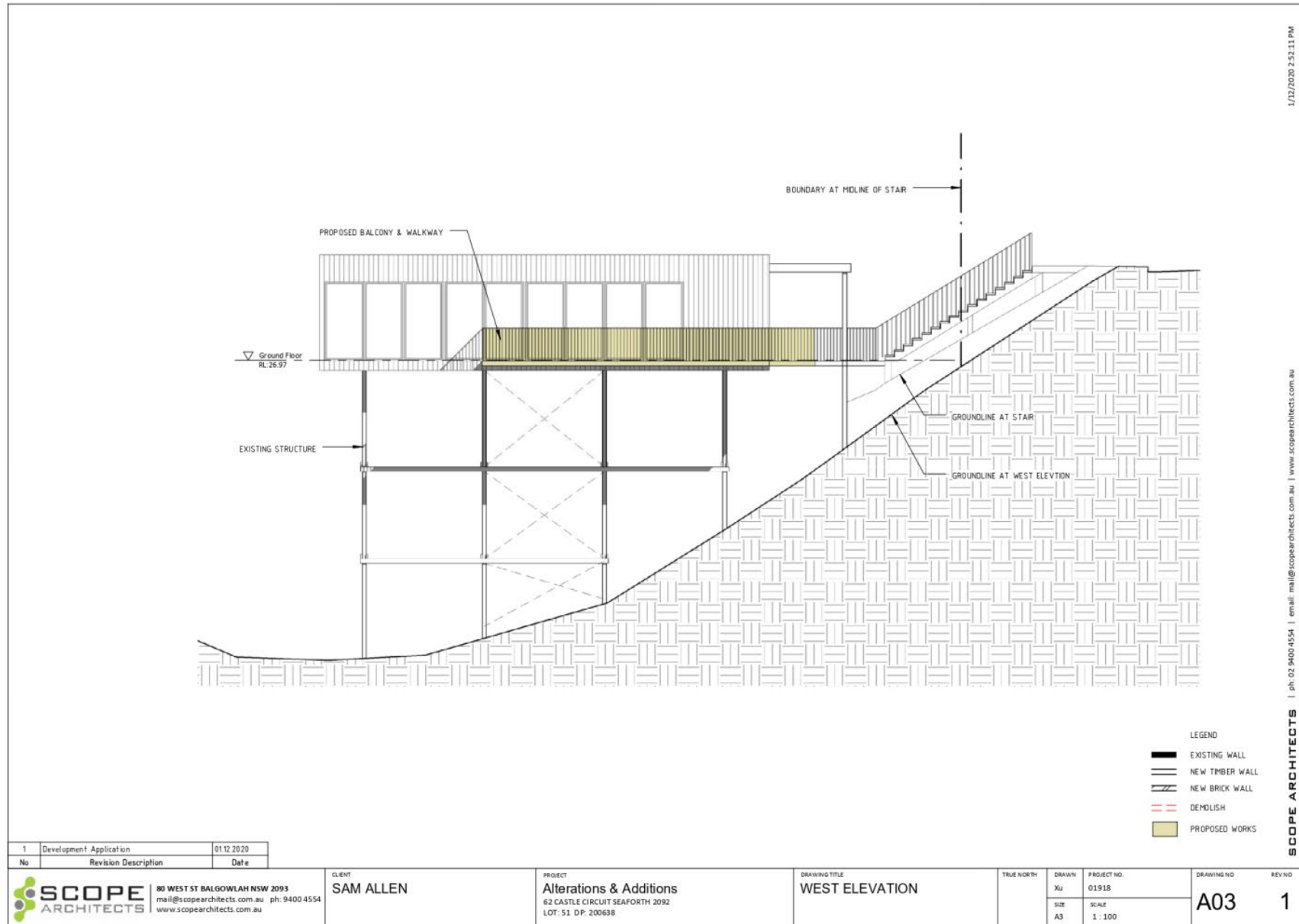
Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

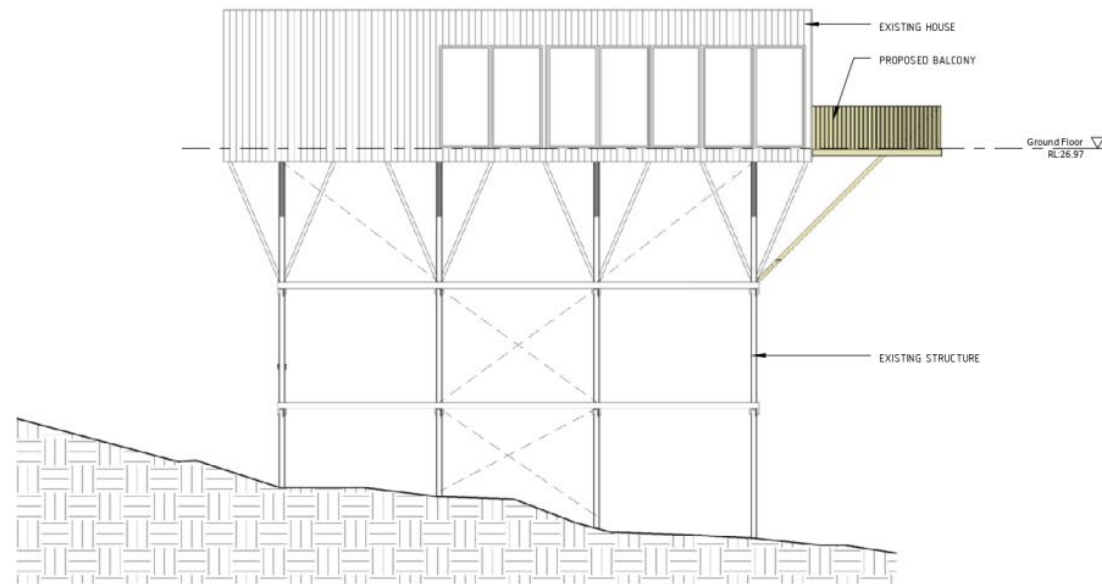
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**18. Landscape Maintenance - Bushfire Protection**

Any existing or new landscaping is to be maintained in accordance with section 3.7 Landscaping, and Appendix 4 - Asset Protection Zone Requirements, of Planning for Bush Fire Protection 2019.

Reason: To confirm compliance with Planning for Bush Fire Protection 2019.







- LEGEND
- EXISTING WALL
 - NEW TIMBER WALL
 - NEW BRICK WALL
 - DEMOLISH
 - PROPOSED WORKS

1	Development Application	01/12/2020
No	Revision Description	Date

SCOPE ARCHITECTS
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CLIENT
SAM ALLEN

PROJECT
Alterations & Additions
62 CASTLE CIRCUIT SEAFORTH 2092
LOT: 51 DP: 200638

DRAWING TITLE
NORTH ELEVATION

TRUE NORTH

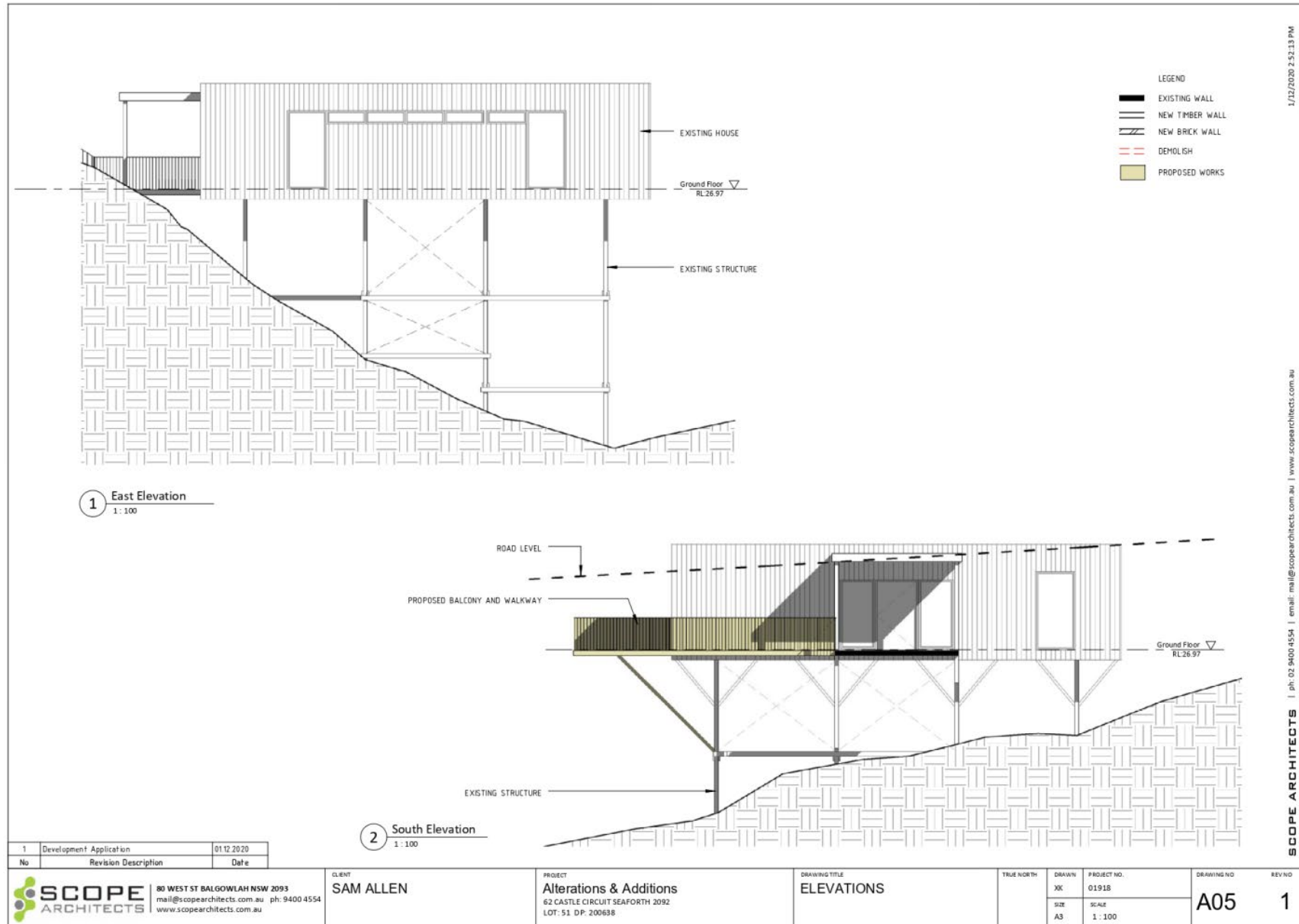
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XX	01918
SIZE	SCALE
A3	1 : 100

DRAWING NO	REV NO
A04	1

1/12/2020 2:51:12 PM

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SCOPE ARCHITECTS



APPENDIX A**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: 62 Castle Circuit, Seaforth
Owner: Mr Sam Allen
Applicant: Mr Sam Allen

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 approximately 10m which does not comply with the numerical standards of this clause. The proposal represents a maximum non-compliance of 1.5m or a 18.7% 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 does not currently provide any open space accessible from the internal living areas. The new deck will allow for an area of open space for the residents directly adjacent to the internal living areas. Requiring strict compliance with the building height control would prohibit any alteration to the existing dwelling. It is considered that the proposal is consistent with the objectives of Clause 4.6.

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

62 Castle Circuit, Seaforth

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 R2 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 lightweight deck attached to the existing dwelling. The dwelling is single storey and is located below street level. As such the existing dwelling and proposed deck will not be prominent when viewed from Castle Circuit. The slope of the site and the location of the new deck is such that the works will be predominantly obscured when viewed from the street by the existing vegetation.
- The works do not extend above the height of the existing dwelling
- The proposal provides for a lightweight deck that is not of unreasonable bulk or scale.
- As the deck does not extend above the height of the existing dwelling and is located on the western side of the dwelling the proposal will not obstruct any views of Middle Harbour or adjoining public open space from the surrounding properties or the public domain.
- Given the orientation of the allotment and the minor nature of the works, 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. Strict compliance with the building height development standard would not permit any works on the majority of the existing dwelling.

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 deck will exceed the maximum height required by Clause 4.3.

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

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- 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 proposal does not obstruct any views from surrounding properties.
- Strict compliance with the building height development standard would severely limit any alteration to the existing dwelling.

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

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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 the existing dwelling is elevated well above existing ground level. Strict compliance would
- Similarly, the proposed development will provide for improved amenity for the residents by locating private open space adjacent to the internal living areas.
- 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

ITEM 3.3

**REV2020/0030 - 7 EATON SQUARE, ALLAMBIE HEIGHTS -
REVIEW OF DETERMINATION OF APPLICATION
DA202020/1070 FOR ALTERATIONS AND ADDITIONS TO A
DWELLING HOUSE INCLUDING A SWIMMING POOL**

REPORTING MANAGER Anna Williams
TRIM FILE REF 2021/281183
ATTACHMENTS
1 Assessment Report
2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** REV2020/0030 for Review of Determination of Application DA202020/1070 for alterations and additions to a dwelling house including a swimming pool on land at Lot 7 DP 209550, 7 Eaton Square, Allambie Heights, subject to the conditions outlined in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2020/0030
Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 7 DP 209550, 7 Eaton Square ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Review of Determination of Application DA202020/1070 for alterations and additions to a 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:	Alexander Thomas Brichta Tamara Rose Brichta
Applicant:	Alexander Thomas Brichta
Application Lodged:	29/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	14/01/2021 to 28/01/2021
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 398,550.90

EXECUTIVE SUMMARY

The application seeks a review of determination of DA2020/1070, which was refused under staff delegation on the 13 November 2020. DA2020/1070 was refused due to inconsistencies with the Warringah Local Environment Plan 2011 and the Warringah Development Control Plan, specifically:

- Clause 1.2 Aims of Plan
- Clause B5 Side Boundary Setbacks
- Clause C4 Stormwater

- Clause D1 Landscaped Open Space and Bushland Setting
- Clause D7 Views

The Applicant has provided the following information to address the above concerns:

- Amended Master Set of Plans
- Revised Stormwater Plans
- Landscape Plan
- View Loss Assessment

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 Applicant has now satisfied Council's previous concerns and the application is now consistent with the relevant provisions and objectives of the WLEP 2011 and the WDP.

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 comprises of a review of determination of DA2020/1070 for alterations and additions to a dwelling house including a swimming pool.

The following works from the original development application are proposed as part of the review of determination and include:

Ground Floor Plan

- demolish internal walls between existing bedrooms, bathroom and staircase to create a new rumpus room, with sliding door to the west yard
- reconfigure the living room and extend the dwelling to the north to create 3 bedrooms with built in robes, a new bathroom, hallway and linen cupboard
- new deck to the east
- new laundry
- new entry and internal staircase to access the first floor

First Floor

- demolish the internal walls between the existing bedrooms to create a master bedroom with walk in robe and ensuite
- reconfigure the existing floor plan and extend the dwelling to the north and east to create an open plan kitchen with walk in pantry, dining, sitting and living room
- new deck to the east
- new internal staircase to access the ground floor

External

- a new 5.45 metre by 2.95 metre swimming pool with a maximum depth of 1.6 metres and a

- volume of 22.1kl
- a new double carport over the existing hardstand parking area
- new soft landscaped areas within the western portion of the site in accordance with the landscape plan
- new hedging along the western boundary and northern boundary of the pool in accordance with the landscape plan

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 7 DP 209550 , 7 Eaton Square ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Allambie Road.</p> <p>The site is irregular in shape with a battle-axe configuration. It has a frontage of 1.84m along Allambie Road and a depth of 43.34m (excluding access handle). The site has a surveyed area of 753.9m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey residential dwelling,</p>

hardstand parking and synthetic grass area at the front of the dwelling. There is also a single storey secondary dwelling at the rear.

The site falls approx. 4m from the west towards the east.

The site does not contain any significant trees or vegetation. Grassed areas are located along the northern side of the dwelling and at the rear around the secondary dwelling.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings and swimming pools.

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:

Application **CDC2013/0530** for Ancillary development - Detached Studio was issued on 18/02/2014 by a private certifier.

Application **BC2013/0144** for Building Certificate - internal alterations and additions of external deck was issued on 29/01/2015 by Council.

Application **CDC2014/0316** for Detached Secondary Dwelling was issued on 08/07/2014 by a private certifier.

Application **CDC2017/0754** for Ancillary development - Alteration to the existing hard stand replace

existing onsite driveway slab was issued on 14/11/2017 by a private certifier.

Application **DA2020/1070** for Alterations and additions to a dwelling house including a swimming pool was refused on the 13/11/2020 for the following reasons:

- Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011
- 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
- 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 C4 Stormwater of the Warringah Development Control Plan
- 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
- 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 D7 Views of the Warringah Development Control Plan

Council requested amendments to the plans to modify the proposed roof form and provide for additional landscaping on site. The Applicant provided updated plans.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 13 November 2020 and the notice of determination was issued on 13 November 2020. The review was lodged and accepted by Council on 21 December 2020 and is to be considered by 13 November 2021, which is within 12 months of the date of determination.

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

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

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

of Section 8.3 (3) of the Act

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 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 5 submission/s from:

Name:	Address:
Mr John Gordon Duncan	19 Arnhem Road ALLAMBIE HEIGHTS NSW 2100
Mrs Kristina Coates	202 Allambie Road ALLAMBIE HEIGHTS NSW 2100
Mrs Samantha Lea Morison	4 Eaton Square ALLAMBIE HEIGHTS NSW 2100
Grahame Geoffrey White	2 Eaton Square ALLAMBIE HEIGHTS NSW 2100
Mr John Michael Sciberras	17 Arnhem Road ALLAMBIE HEIGHTS NSW 2100

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

- Stormwater
- Loss of green space
- Bulky Development
- Privacy
- View Loss
- Property Valuation

The matters raised within the submissions are addressed as follows:

- *Concern is raised regarding the proposed disposal of stormwater into Eaton Square and potential flooding consequences.*

Comment:

The Applicant provided a Stormwater Drainage Plan as part of the Review of Determination. The submitted drainage plan was reviewed by Council's Development Engineer and is acceptable subject to the recommended conditions included as part of the development consent.

Evidence of the refusal of easement from the downstream property owner permits the proposal for a level spreader in accordance with Council's Water Management Policy.

- *Concern is raised the proposed development will further reduce soft landscaped area on the site.*

Comment:

The proposal seeks to provide additional soft landscape areas to comply with the requirements of the Warringah Development Control Plan.

The Applicant seeks to replace the existing AstroTurf with deep soil landscaped area. Additionally a portion of the existing concrete hardstand area and pathway will be removed and replaced with soft landscaped areas. A Landscape Plan has also been provided to support the proposed development.

- *Concern is raised the proposed development will cause unreasonable privacy impact to adjacent dwellings.*

Comment:

The proposed alterations and additions to the existing dwelling comply with the front, side and rear setback controls and are not expected to have an unreasonable impact on adjacent dwellings. The living room, kitchen and dining room have been orientated with windows facing towards the private open space within the rear of the site. Additionally high sill windows have been incorporated into the building design to reduce potential for onlooking and overlooking.

A site visit was conducted at 7 Eaton Square, Allambie Heights. From existing balcony RL from a standing position, as shown in Figure 1 and 2 below the direct line of sight is above any adjoining dwellings. It is considered there is sufficient building separation along with the combination of existing structures on site and medium size trees to mitigate any unreasonable visual and acoustic privacy impacts.



Figure 1: Looking east from the existing balcony at 7 Eaton Square, Allambie Heights



Figure 2: Looking east from existing balcony at 7 Eaton Square, Allambie Heights

On balance it is considered there is sufficient building separation to ensure reasonable levels of privacy will be maintained to and from the dwelling.

- *Concern is raised that the bulk and scale of the proposed development is unreasonable.*
Comment:
Council requested the Applicant to provide amended plans to ensure the proposed first floor

extension will comply with the side building envelope control to the north. The Applicant provided amended plans with a hipped roof to the north to comply with the relevant side building envelope controls.

The proposed alterations and additions to the dwelling comply with the Warringah Development Control Plan Part B Built Form Controls and is considered to present a modest form that is compatible with the character of development within the immediate vicinity.

- *Concern is raised that the proposed development will impact upon neighbour view corridors.*

Comment:

Council considers the the proposed development to result in a minor view loss from the master bedroom of adjoining property directly to the west at 202 Allambie Road, Allambie Heights. The submission states that there will be view loss experienced from the living, kitchen, entrance hallway and master bedroom. The living, kitchen and entrance hallway are located on the first floor of the dwelling, with the master bedroom located on the first floor.

There is currently no view from a seated position as a result of the existing rear fencing. There are slight views from a standing position at the rear of the dwelling, as seen in Figure 3 below. It is unreasonable to expect this view to be unaffected given it is at ground level and would be comprised by any structure over 2 metres above ground.



Figure 3: Looking east from the first floor of the dwelling at 202 Allambie Road, Allambie Heights

See Part D7 Views for assessment and further discussion on view loss from the master bedroom.

- Concern is raised that the proposed development will result in loss of property valuation for adjoining sites

Comment:

Council considers the view loss to be minor and therefore will not result in a loss of property valuation for adjoining sites. See Part D7 Views for further discussion.

REFERRALS

Internal Referral Body	Comments

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The submitted drainage plan is acceptable subject to conditions. Evidence of the refusal of easement from the downstream property owners permits the proposal for a level spreader in accordance with Council's Water Management Policy.</p> <p>No objection to approval, subject to conditions as recommended.</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. A378705_02 dated 29 March 2021).

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	7.6m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	N/A
5.8 Conversion of fire alarms	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.8m	-	Yes
B3 Side Boundary Envelope	N - 4m	within	-	Yes
	S - 4m	within	-	Yes
	W - 4m	within	-	Yes
B5 Side Boundary Setbacks	N - 0.9m	2.2m	-	Yes
		carport - 0.7m	22.2%	No
	S - 0.9m	1.8m	-	Yes
	W - 0.9m	8.1m	-	Yes
B9 Rear Boundary Setbacks	6m	13.8m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	265.3m ² or 40%	-	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	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	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
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
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The control requires a minimum side setback of 0.9m.

The proposed carport is to have a setback of 0.7m to the northern side boundary, representing a variation of 22.2%.

The dwelling itself is setback 2.2m to the northern boundary and 1.8m to the southern boundary.

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The proposal has provided for deep soil landscaped areas above that already on site. The proposed location of the carport will not comprise any deep soil landscaped areas.

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

Comment:

The proposed carport will be of a modest single storey open form and is not expected to be visually dominant. The proposed roof will complement the existing dwelling and provide for visual interest.

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

Comment:

The single storey carport is not expected to add any unreasonable scale and bulk to the proposed development.

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

Comment:

The proposed carport is not expected to have any unreasonable impacts on privacy, amenity and solar access given the proposed use, location and modest form.

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

Comment:

The open structure of the carport will ensure a reasonable retention of views to and from public and private properties. Casual surveillance will be continue to be available towards Eaton Square from the dwelling.

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.

D7 Views

Merit consideration

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

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The adjoining site directly to the west at 202 Allambie Road, Allambie Heights currently has distant headland and ocean views from the second storey of the dwelling (as seen in Figure 4 below) View from a standing position looking east towards Dee Why Headland and Curl Curl Beach from the first floor master bedroom balcony.



Figure 4: View from a standing position looking east towards Dee Why Headland and Curl Curl Beach from the first floor master bedroom balcony at 202 Allambie Heights

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

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

Comment to Principle 2:

The affected views from the master bedroom are obtained through the northern side boundary at 7 Eaton Square, Allambie Heights. These views are mostly a standing position, with some seated views available closer to the edge of the master bedroom balcony.

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 loss from the master bedroom is considered to be moderate, however views towards the ocean will be maintained directly to the north and south of the proposed extension. As above, the views from the master bedroom are not valued as highly as views from kitchens and living rooms. The view loss from the living, kitchen and entrance hallway is considered to be negligible as it is unrealistic to retain distant views from the ground level, particularly in this case where the view is already compromised by existing fencing, structures and vegetation. Overall, it is expected the level of view loss on balance to be minor for the whole property.

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 proposed development mostly complies with all DCP controls, with a minor variation to the side setback control for the proposed single storey open carport. The development complies with building height, setback, side building envelope and landscaped area controls. The Applicant has provided amended plans that reduce the bulk of the proposed roof structure to present a form consistent with the desired character of the locality.

The proposed extension to the dwelling is considered to be acceptable and allows for a reasonable level of view sharing above and beside the proposed extension.

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

Comment:

The proposed works to the dwelling have been designed to comply with the relevant built form controls and present an amended roof form that is consistent with the existing dwelling,

surrounding dwellings and the character of the locality.

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

Comment:

There are no works that will result comprise or require the removal of any 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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$3,986 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$398,551.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2020/0030 for Review of Determination of Application DA202020/1070 for alterations and additions to a dwelling house including a swimming pool on land at Lot 7 DP 209550, 7 Eaton Square, ALLAMBIE HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
N1 Specification	22/06/2020	Sally Gardner Design and Draft
N2 Schedule and BASIX Commitments	22/06/2020	Sally Gardner Design and Draft
N3 Window Schedule RevA	26/03/2021	Sally Gardner Design and Draft
A1 Roof Plan	22/06/2020	Sally Gardner Design and Draft
A2 Upper Floor Plan	22/06/2020	Sally Gardner Design and Draft
A3 Upper Floor Dimension Plan	22/06/2020	Sally Gardner Design and Draft
A4 Ground Floor Plan	22/06/2020	Sally Gardner Design and Draft
A5 Ground Floor Dimension Plan	22/06/2020	Sally Gardner Design and Draft
A6 Elevation - North RevA	26/03/2021	Sally Gardner Design and Draft
A7 Elevation - East RevA	26/03/2021	Sally Gardner Design and Draft
A8 Elevation - South	22/06/2020	Sally Gardner Design and

		Draft
A9 Elevation - West RevA	26/03/2021	Sally Gardner Design and Draft
A10 A-A - Cross Section	22/06/2020	Sally Gardner Design and Draft
A11 B-B - Long Section	22/06/2020	Sally Gardner Design and Draft
A12 C-C - Long Section	22/06/2020	Sally Gardner Design and Draft
A13 Pool Details RevA	26/03/2021	Sally Gardner Design and Draft
S1 Site Analysis Plan	22/06/2020	Sally Gardner Design and Draft
S2 Site Plan and Calculations RevA	26/03/2021	Sally Gardner Design and Draft
S3 Site Management Plan	22/06/2020	Sally Gardner Design and Draft

Engineering Plans		
Drawing No.	Dated	Prepared By
Stormwater Management Plan	17/03/2020	Stellen Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Stormwater Design Report	17/12/2020	Stellen Consulting
BASIX Certificate No. A378705_02	29/03/2021	Stellen Consulting

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan	-	Watermark Landscapes

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

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

2. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon

- plans/specifications is required prior to the issue of the Construction Certificate);
- (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 sewerage 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 \$3,985.51 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 \$398,550.90.

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. **Amendments to the approved plans**

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

- o The swimming pool coping is to be setback 1 metre from the northern side boundary to allow for additional plantings. Planting is to be done in accordance with the approved Landscape Plan.

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.

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. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management Policy and generally in accordance with the concept drainage plans prepared by Stellen Consulting, drawing number DR-000, 001, 002, 003, and 004 Revision 3 dated 17/02/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The level spreader is to be a grated drain at the existing surface level of the ground located a minimum of 3 metres from the rear boundary of the site to ensure there is no concentration of flows.
2. Suitable water proof membrane is to be provided to the existing building to ensure there is no rising damp from the grated drain.

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.

9. **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.

10. **Waste Management Plan**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Road Reserve**

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

Reason: Public safety.

12. **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.

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

13. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application to Council for approval. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA), a copy of the Works-as-Executed plans (details overdrawn on a copy of the approved drainage plan) and Hydraulic Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

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

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

14. **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. (DACPLF01)

15. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

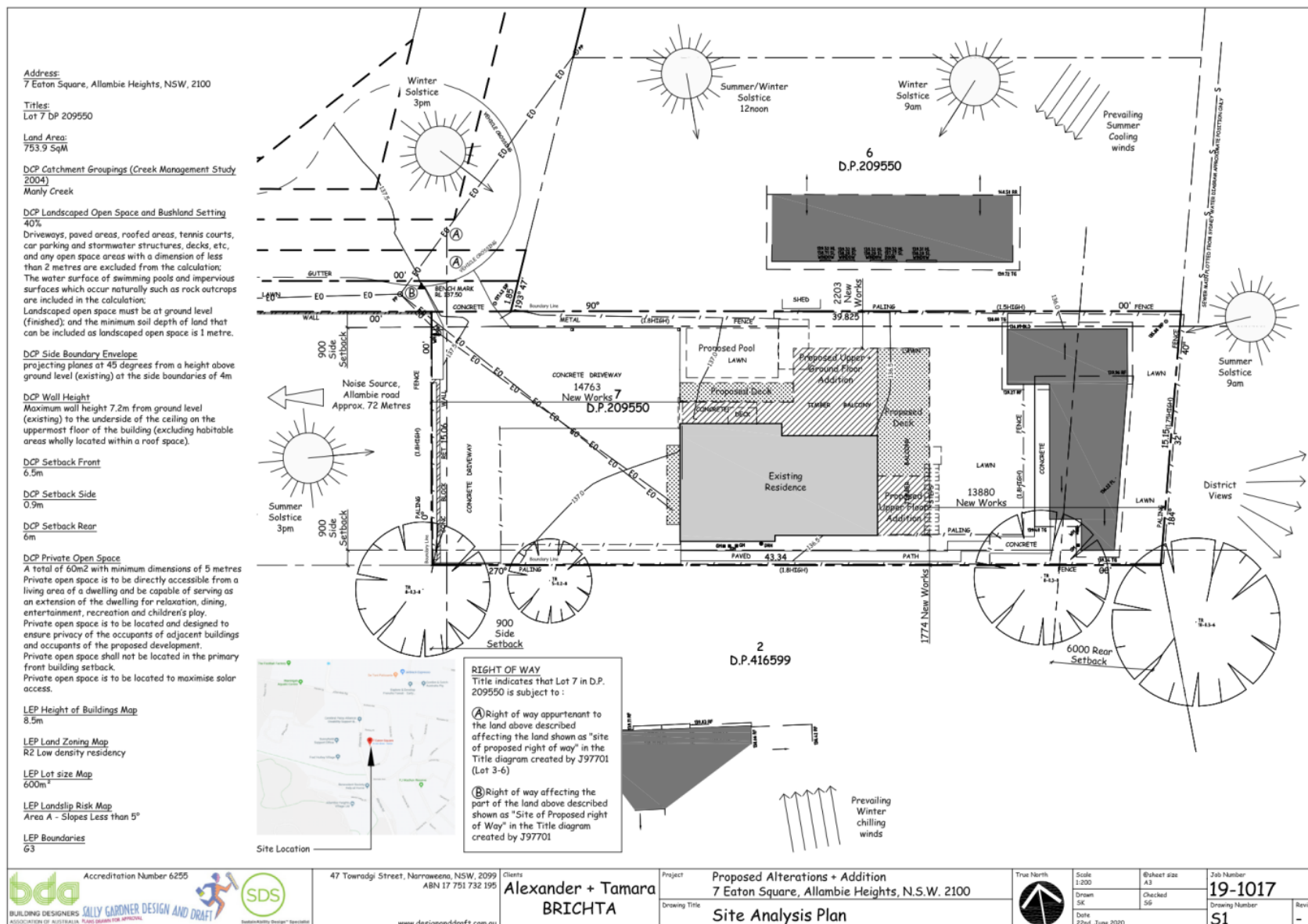
Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

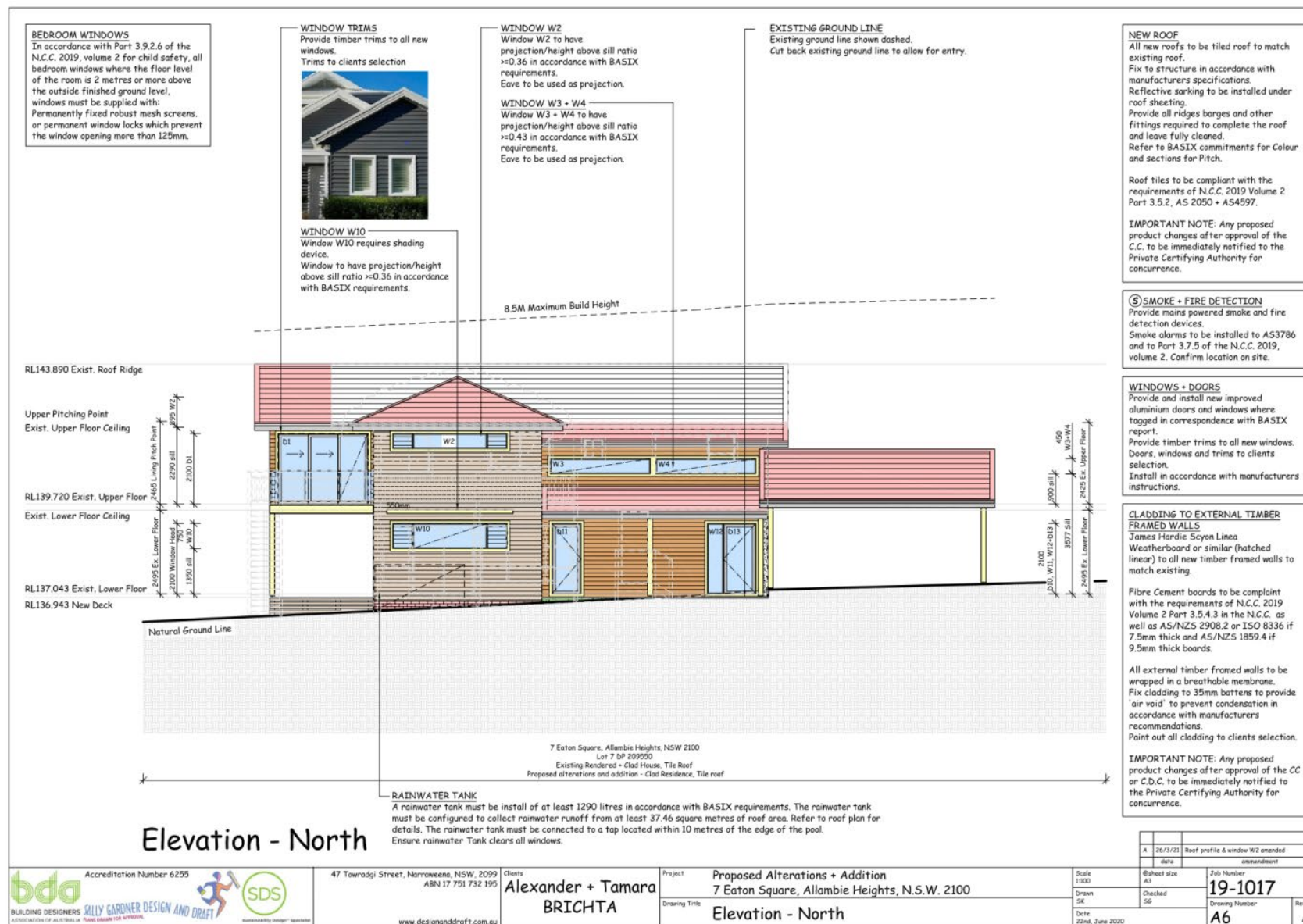
Reason: To protect human life (DACPLF09)

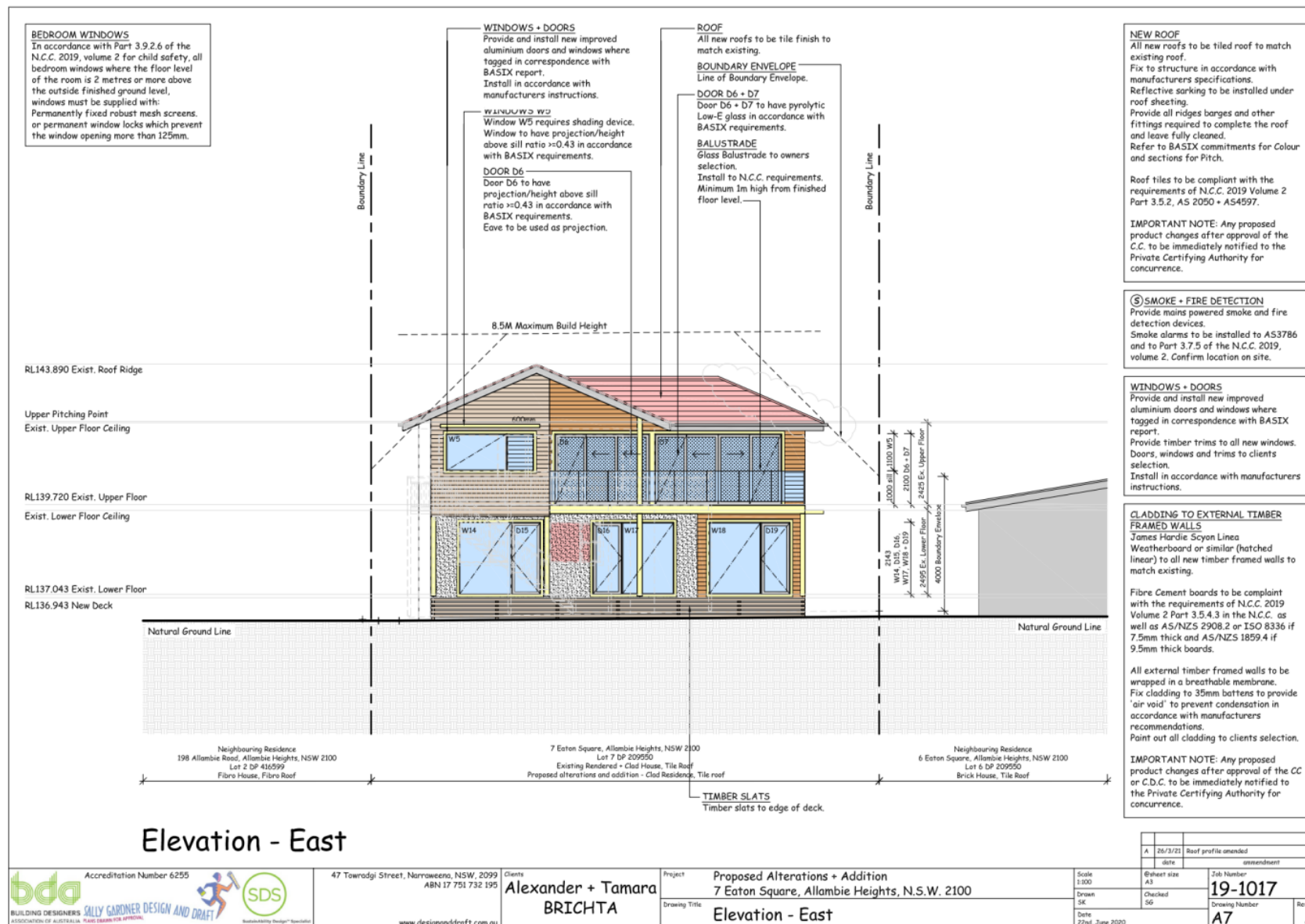
16. **Landscape Plan**

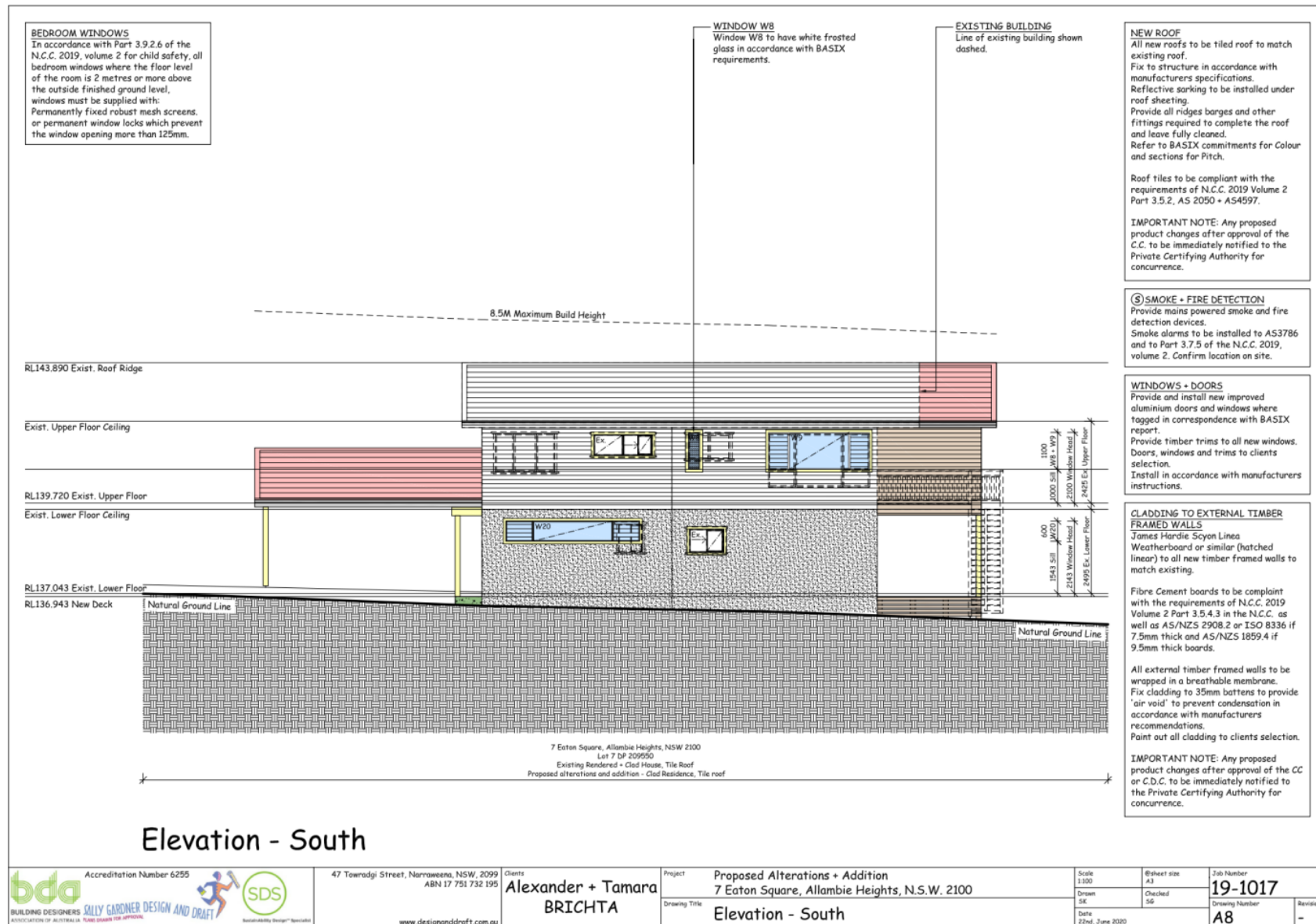
All landscaping is to be carried out in accordance with approved landscape plan. All areas marked as Turf on the landscape plan are to be soft landscaped areas, for the avoidance of doubt the use of AstroTurf as soft landscaped area is not supported.

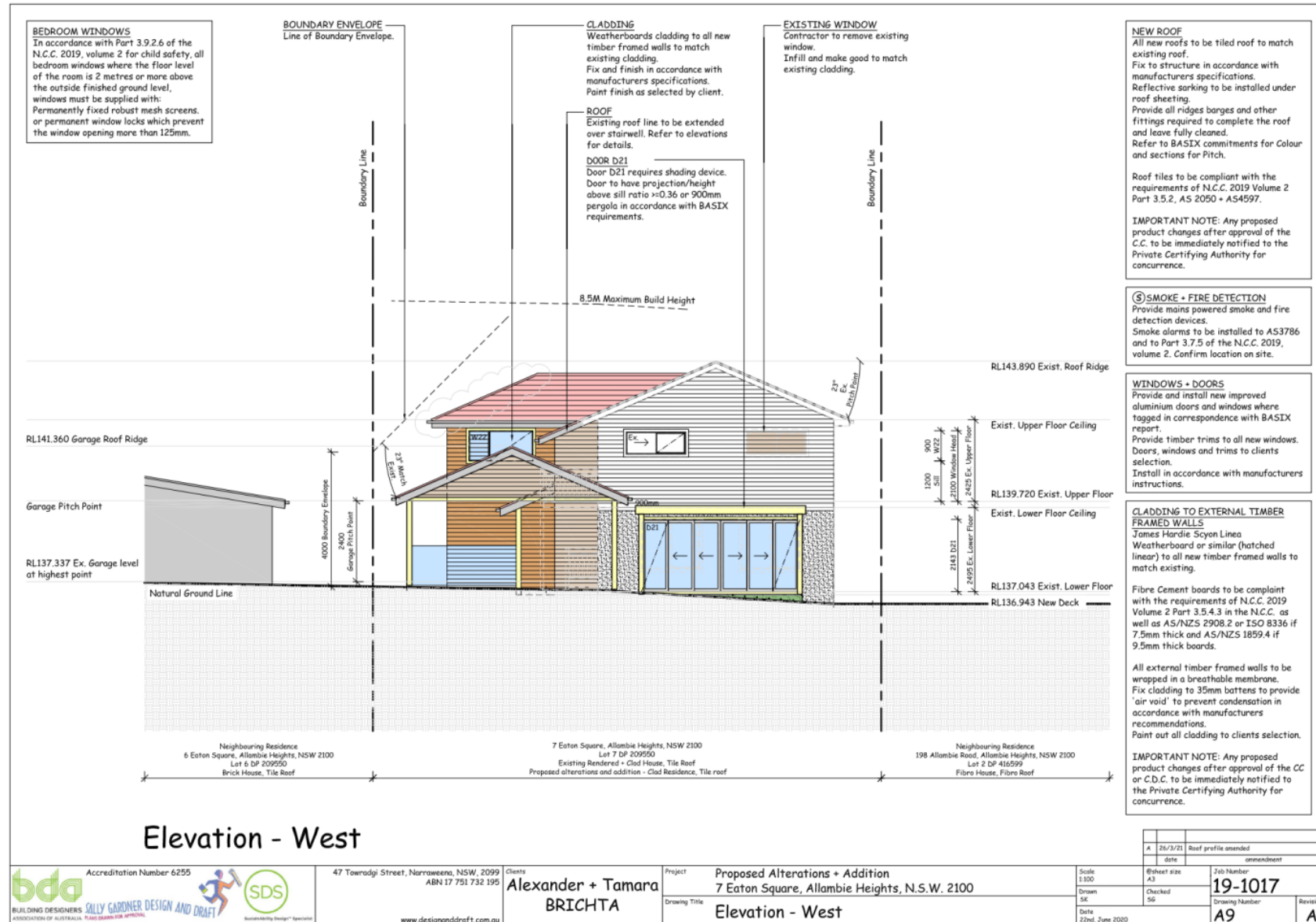
Reason: To ensure soft landscaped areas on site to facilitate opportunities for deep soil landscaping.











ITEM 3.4	DA2020/1695 - 77 FOAMCREST AVENUE, NEWPORT - CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING
REPORTING MANAGER	Lashta Haidari
TRIM FILE REF	2021/281215
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council, as the consent authority, **approves** Development Consent to DA2020/1695 for construction of a Residential Flat Building on land at Lot 1 & 2 DP 22450, 77 Foamcrest Avenue, Newport, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1695
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 1 DP 22450, 77 Foamcrest Avenue NEWPORT NSW 2106 Lot 2 DP 22450, 75 Foamcrest Avenue NEWPORT NSW 2106
Proposed Development:	Construction of a Residential Flat Building
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Project Venture Development NO 4 Pty Ltd
Applicant:	Project Venture Development NO 4 Pty Ltd
Application Lodged:	30/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	15/01/2021 to 29/01/2021
Advertised:	15/01/2021
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 4,329,276.00

Executive Summary

The application is for the demolition of existing structures and the construction of a two (2) storey residential flat building containing 7 Units, basement car parking for 17 vehicles, landscaping works around the development and strata subdivision of the units. The application is referred to the Development Determination Panel (DDP) as the cost of works is in excess of \$1 Million and the application has received a minimum of 3 submissions.

The application was advertised and notified for a period of 14 days and four (4) submissions were received regarding the proposal. The public submissions raised the issue of dilapidation and construction impact on adjoining properties, visual privacy, front fencing, number of units and asbestos

hazards during construction. Each of these submission issues are addressed within the assessment report and conditions have been recommended to address issues as necessary.

The application seeks a variation of 0.5% to Clause 4.5A Density controls for certain residential accommodation. The application is accompanied by a Clause 4.6 Variation Request which establishes the environmental planning grounds relied upon to seek a departure from the development standard. Council has reviewed the written requested under Clause 4.6 and is satisfied there is sufficient environmental planning grounds to support the variation and the proposal to be within the public interest given the consistency with the objectives of the development standard and R3 Medium Density Residential Zone.

The proposal seeks a numerical variation to the landscape open space calculation and variation to the upper floor side setbacks which are limited to open balcony elements and roof overhangs. These variations are addressed within the report and are supported on merit as the proposed development is considered will designed, does not result in any unreasonable amenity impacts and the proposal meets the desired future character of the R3 Zone consisting of a medium density development with generous deep soil landscape gardens surrounding the building.

The application was referred to the Design Sustainability Advisory Panel (DSAP) for comment during the assessment of the application. A number of recommendations were provided by the DSAP which the applicant has addressed to the satisfaction of Council by way of amended plans, additional information and written responses from the project architect.

Overall, the proposed development is well considered scheme which will fit in with the existing and desired future character of the R3 Medium Density Residential zone. The proposal is recommended to the DDP for approval, subject to the conditions outlined at the end of this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for a two (2) storey residential flat building consisting of seven (7) residential units. Specifically, the proposal consists of:

- Demolition of the existing structures on the land;
- Consolidation of the two lots into one;
- Construction of a Residential Flat Building Consisting of:

Basement Level

- Basement parking consisting of 15 residential spaces and 2 visitor spaces
- Plant rooms and storage

Ground Floor

- 2 x 2 bedroom apartments and 2 x 3 bedroom apartments. Each with a 16sqm terrace
- Entrance and circulation core along the southern extent of the building
- Residential waste storage area

First Floor

- 3 x 3 bedroom apartments with each a terrace of minimum 33.5sqm.
- Entrance and circulation space along the southern extent of the building
- Strata subdivision of the development
- Landscaping works around the development.
- Removal of trees in accordance with the submitted arborist report.

Amended Plans

Amended plans were received in response to recommendations raised by the Design Sustainability Advisory Panel. The amendments included minor internal alterations and a reduction of the roof form at the southern edge of the building. As these design changes did not increase the size of the development, the application was not required to be re notified.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.12 Landscaped Area - General
Pittwater 21 Development Control Plan - D10.14 Fences - General

SITE DESCRIPTION

Property Description:	Lot 1 DP 22450 , 77 Foamcrest Avenue NEWPORT NSW 2106 Lot 2 DP 22450 , 75 Foamcrest Avenue NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of two (2) allotment located on the eastern side of Foamcrest Avenue.

The site is regular in shape with a frontage of 30.48m along Foamcrest Avenue and a depth of 45.72m. The site has a surveyed area of 1393m².

The site is located within the R3 Medium Density Residential zone and accommodates a detached single storey dwelling on each lot.

The site is relatively level with very slight fall to the rear.

The site has established vegetation along the rear boundary consisting of medium and tall shrubs and canopy trees. There are two medium height exotic canopy trees in the rear setback of 77 Foamcrest. There are three palm trees within the front setback of 75 Foamcrest. There are two established canopy trees in the road reserve in front of the sites.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by two storey medium density residential development. Immediately to the north of the site is a two storey medium density development with basement parking. To the south of the site is a single storey cottage which is the last remaining single dwelling the eastern side of this block along Foamcrest Avenue. Across the road to the west are two storey medium density residential developments.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application .as SEPP 65 does not apply to the development.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a response to the DSAP minutes. This resulted in minor amendments to the internal building layout and an updated BASIX Certificate.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/01/2021 to 29/01/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Ian Godfrey Heard	7 / 79 - 83 Foamcrest Avenue NEWPORT NSW 2106
Body Corporate Services Pty Ltd	Level 27/66-68 Goulburn Street SYDNEY NSW 2000
Ms Robyn Elizabeth Jones	9 / 71 Foamcrest Avenue NEWPORT NSW 2106
Nicole Jean Hosking	PO Box 38 MONA VALE NSW 2103

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

- Asbestos hazard during demolition.
- Request for dilapidation report for adjoining property 79-83 Foamcrest Avenue and 403 Barrenjoey Road.
- Noise from construction of development to the north of 79-83 Foamcrest Avenue and the subject site.
- Construction impact upon the common boundary fence and clarify fencing proposed between subject site and 79-83 Foamcrest.
- The development should be reduced to 5 units and each unit have 3 bedrooms.
- The bin storage area should be relocated to be in alignment with the bin storage location for the development at 56-58 Foamcrest Avenue.
- The front fence should be 'more substantial' and in keeping with the street'.
- Request for privacy screens at 1.7m along the southern elevation to address privacy for Unit 9 at 71 Foamcrest Avenue.

The matters raised within the submissions are addressed as follows:

- *Asbestos hazard during demolition.*
Comment:
A condition of consent has been recommended for asbestos removal to be carried out in accordance with all relevant Australian Standards.
- *Request for dilapidation report for adjoining property 79-83 Foamcrest Avenue and 403 Barrenjoey Road.*
Comment:
A condition of consent has been recommended for a dilapidation report to be carried out for the above mentioned properties.
- *Noise from construction of development to the north of 79-83 Foamcrest Avenue and the subject site.*
Comment:
Standard conditions of consent have been recommended with regards to hours of work, construction traffic management and construction site management. Whilst unfortunate there is another approved development to the north that could be constructed at the same time, this would not be a reason to refuse the subject application.
- *Construction impact upon the common boundary fence and clarify fencing proposed between*

subject site and 79-83 Foamcrest.

Comment:

The applicant has indicated that they intend to carry out boundary fencing along the common boundary under the *Dividing Fences Act* as a lapped and capped timber fence. No common boundary fence is specified on the architectural plans or removal of fencing is proposed.

- *The development should be reduced to 5 units and each unit have 3 bedrooms*

Comment:

The issue of dwelling density is addressed under Clause 4.6 of this report.

- *The bin storage area should be relocated to be in alignment with the bin storage location for the development at 56-58 Foamcrest Avenue.*

Comment:

Council's waste team have reviewed the bin storage location and are satisfied with the size, location and functionality of the bin storage room. The bin storage area has been integrated into the site design and is considered suitable.

- *The front fence should be 'more substantial and in keeping with the street'.*

Comment:

The front boundary fence has been integrated into the site design with a 1m wide landscape strip between the fence and front boundary, to offer privacy for the residents and being softened by landscaping to suit the landscape character of the street. Boundary fencing is discussed in detail later within the report.

- *Request for privacy screens at 1.7m along the southern elevation to address privacy for Unit 9 at 71 Foamcrest Avenue.*

Comment:

Privacy screens of 1.7m height are used along the southern circulation core to mitigate overlooking impacts. There is sufficient physical separation between the subject development and the flat building upon 71 Foamcrest Avenue to mitigate privacy impacts between the upper floors of the developments.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p>Not supported and recommended amendments</p> <p>The application was referred to the Design Sustainability Review Panel and eight recommendations came from the Panel to be addressed by the applicant.</p> <p>The applicant provided a response to each of the recommendations by way of amended plans, additional information and written responses as to how each recommendation had been addressed in the design.</p>

Internal Referral Body	Comments
	<p>Council has considered the responses provided by the applicant later within this assessment report under section 'SEPP 65 - Design Quality of Residential Apartment Development'. As discussed later in this report, the applicant has provided a satisfactory response to each of the recommendations to allow Council to support the proposed development.</p>
<p>Building Assessment - Fire and Disability upgrades</p>	<p>Supported (subject to conditions)</p> <p>The BCA report prepared by East Coast Approvals has now been supplied as requested by previous comments and my assessment is as shown below:</p> <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 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> <p>The applicant is required to supply Council with a copy of the BCA Assessment Report from East Coast Approvals Group (Reference: 200527) dated 10/12/2020 as noted in the Fire Engineering Letter from Fire Safety Studio Pty Ltd dated 11/12/2020, so as to enable a full assessment of this proposed development.</p>
<p>Environmental Health (Acid Sulphate)</p>	<p>Supported (subject to conditions)</p> <p>General Comments</p> <p>Comment has been requested from Environmental Health in regard to this proposal for the "Construction of a Residential Flat Building" in relation to the potential disturbance of acid sulphate soils.</p> <p>The subject site is classified as class 4 acid sulphate soils meaning development consent is required for:</p> <p>"Works more than 2 metres below the natural ground surface.</p> <p>Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface."</p> <p>The plans submitted with the proposal indicate a portion of the development (to basement level) requires excavation in excess of 2 meters in depth from existing ground level.</p> <p>Reference is made to Geotechnical Report numbered 2020/202 and dated 12 November 2020 by Crozier Geotechnical Consultants. This report states that "due to the ground conditions encountered in the</p>

Internal Referral Body	Comments
	<p>site investigation and the proposed works there is a "very low" likelihood of intersecting these soils or impacting the local water table. As such, an ASS Management Plan (ASSMP) is not considered necessary"</p> <p>Environmental Health supports this proposal provided that appropriate conditions are imposed that ensure adequate measures are undertaken should further evidence present in relation to acid sulphate soils during works.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Industrial)	<p>Supported (subject to conditions)</p> <p>General Comments</p> <p>Environmental Health have been requested to consider the proposal for "Construction of a Residential Flat Building". In this regard, the main consideration on relation to the proposed development is any potential noise impacts to the amenity of surrounding receivers that may be experienced. Generally, noise generating external mechanical plant is a common source of complaint by surrounding receivers if not adequately managed.</p> <p>The Statement of Environment Effects states:</p> <p>"...Air conditioning units are located within the basement, away from noise sensitive areas..."</p> <p>Despite this, the acoustic report numbered 200424 dated 14/12/20 by JHA states:</p> <p>"External mechanical plant will consist in external condenser units serving individually to each apartment. The proposed location of the condenser units is in the south-east of the development underneath an undercroft as shown in Figure 5"</p> <p>Accordingly, an appropriate condition is recommended be placed on the development requiring a noise assessment to be conducted (prior to the issuing of an occupation certificate) that confirms compliance with projected noise trigger levels as noted in the acoustic report numbered 200424 dated 14/12/20 by JHA.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>Supported (subject to conditions)</p>

Internal Referral Body	Comments
	<p>The application seeks approval for the demolition of two single detached residences and the construction of a residential flat building, infrastructure and external landscape works.</p> <p>Council's Landscape section have assessed the application against the following documents relevant to landscape assessment:</p> <ul style="list-style-type: none"> Pittwater 21 DCP, including B4.22 Preservation of Trees and Bushland Vegetation; C1.1 Landscaping; and D10 Newport Locality. <p>Landscape Plans and a Arboricultural Impact Assessment are provided with the development application in accordance with Council's DA Lodgement requirements.</p> <p>The landscape plan proposal generally provide adequate landscape treatment to deep soil areas around the perimeter of the site and on-slab structures to satisfy the landscape controls of the DCP.</p> <p>The Arboricultural Impact Assessment notes that three prescribed trees (requiring Council consent) existing on the development site with two impact by the building envelope and one other in poor condition that should be removed regardless of development. Four native trees within the site are recommended for retention and protection including trees identified as T11 and T2 (Waterhousia), T17 Swamp Mahogany, and T23 Coast Banksia. Existing Exempt Species as identified are proposed for removal and these do not require Council consent.</p> <p>All trees and vegetation within adjoining properties shall be protected. The existing Paperbark street trees fronting the development site shall be the subject of tree protection measures and engagement by a Project Arborist during the works.</p> <p>The landscape component of the proposal is acceptable subject to conditions.</p>
NECC (Coast and Catchments)	<p>Supported (subject to conditions)</p> <p>Officer comments</p> <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>Coastal Management Act 2016</p> <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>

Internal Referral Body	Comments
	<p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Use Area' map but not the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment of the submitted Statement of Environmental Effects (SEE) report prepared by Richard Cole Architecture dated December 2020, Council accepts the assessment that the DA satisfies requirements under clauses 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>No coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	<p>Supported (subject to conditions)</p> <p>No objections to the proposed residential flat building subject to conditions</p>
Strategic and Place Planning (Urban Design)	<p>Supported</p> <p>The proposal achieves the desired future character of the locality in height, bulk, scale, form and materiality. The bulk and scale of the built form is minimised as a two storey building with an articulated</p>

Internal Referral Body	Comments
	facades to break down the scale and provide modulation of sunlight and shade.
Traffic Engineer	<p>Supported (subject to conditions)</p> <p>The proposed development has been assessed under the existing LEP/DCP requirements for the site and the applicant has addressed all matters relevant to the requirements for the development of this nature on the subject site.</p> <p>The proposed development contains 7 Apartments 3 2-bedroom = 6 parking spaces 4 3-bedroom = 8 parking spaces Allocated 15 spaces</p> <p>Visitor spaces required is 2.3 under the DCP. Provided is 2 spaces, whilst not ideal is acceptable given that the reduction in driveways in Foamcrest Avenue creates 1 more on street space.</p> <p>Bicycle parking potential is included in the dedicated storage allocated for each unit, but not identified as such. Not ideal but acceptable in this development.</p> <p>Car park turning has been demonstrated to comply with the the Australian Standard 2890.1:2004 with all garage spaces accessible and the traffic being able to enter and leave the structure in a forward direction.</p> <p>The proposal is supported on Traffic and Transport grounds.</p>
Waste Officer	<p>Supported (subject to conditions)</p> <p>Proposal is approved with conditions.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**SEPP 55 - Remediation of Land**

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

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously outlined the proposed development is for the erection of a 2 storey residential flat 'housing' development plus basement car parking for the provisions of 7 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application, as the building is only 2 stories.

Design Sustainability Advisory Panel (DSAP) Referral

The application was referred to the DSAP for review and advice. Although the proposal does not fall under SEPP 65, given the nature and scale of the development the application was referred to the DSAP for review.

The DSAP raised the following recommendations for the applicant to address and respond:

Recommendation 1. Internal spaces should not rely solely on light wells for daylight and outlook. Achieving adequate amenity may result in fewer and/or smaller apartments.

Recommendation 2. Privacy of habitable internal and external spaces should be improved by employing greater separations between proposed and existing buildings and vegetation, as distinctly preferable to relying on screening.

Recommendation 3. Overshadowing of 73 Foamcrest Avenue should be reduced to allow solar access to future North-facing ground floor apartments to the south of the proposal (equivalent to proposal).

Recommendation 4. The proposed development should be redesigned to comply with the 50% Landscape control

Recommendation 5. Re-arrange the layout of the common circulation to allow for greater privacy, outlook and daylight to apartments.

Recommendation 6. Increasing the proportion of landscaped area should also allow for a more generous entryway and allow for planting.

Recommendation 7. Increase performance of Apartments 5 and 7 to above NatHERS 6 star.

Panel Conclusion:

The Panel does not support the proposal in its current form.

The Panel is of the view that the recommended changes in the design, particularly those related to landscape area, outlook, privacy and overshadowing should be given priority.

Applicant Response

Following the referral comments provided by the DSAP, the applicant provided a response by way of minor amendments to the plans, updated BASIX/NatHERS certificate and written responses to explain how each of the issues have been investigated and attempted to be resolved. It is noted that one of the changes suggested by the DSAP involved rearrangement of circulation core on the southern side of the building, which would constitute a significant redesign of the proposal. The applicant's written response details how the redesign of the circulation core was investigated, however ultimately was not incorporated into the amendments for the reasons outlined in the written response. The applicant's response forms part of the documentation submitted with the development application and the latest issue of plans and BASIX certificate are considered as part of the final assessment.

Council's Assessment/Response

An assessment of the information submitted by the applicant in response to the DSAP comments are made below:

Recommendation 1 - The applicant has submitted amended plans increasing the width of the internal courtyards at both the ground floor and first floor, as well as increasing the roof opening to provide increase levels of solar access, ventilation and outlook to the internal landscaped courtyard. A series of internal view montages have been submitted in support of the arrangement. The design and orientation of the development to include all 7 units having a north facing terrace area and living area is considered a significant benefit of the development and the resulting internal courtyard outlook for the bedrooms within units 2, 3 and 6 a reasonable outcome in favor of north facing living rooms and balconies. The applicant has responded appropriately to the minutes.

Recommendation 2 - The proposal includes a combination of screening, planter boxes, existing established boundary vegetation and proposed vegetation to mitigate overlooking and looking between properties. The orientation towards the northern side boundary allows for all units to have a optimal

solar access outcome, without unreasonable overlooking upon adjoining sites with the above measures implemented. The proposal is considered satisfactory with regards to visual privacy and overlooking and would not be recommended for refusal based on the proposed design and implementation of the above mentioned solutions.

Recommendation 3 - The applicant has reduced the extent of the southern eave overhang by 600mm to increase solar access for the southern property and provided a written response to this issue. In addition, the submitted shadow diagrams demonstrate compliant solar access is achieved to the existing single storey dwelling on at 73 Foamcrest Avenue. The proposal is compliant with the building envelope on the southern elevation and the height of the southern facade is up to 6.8m, well within the maximum 8.5m height limit. It is considered the development will not preclude the reasonable development potential of the southern site.

Recommendation 4 - The applicant has provided further clarification regarding the landscape open space calculation in accordance with the permitted variations under the control, totaling 44% including variations. A merit assessment of the landscape open space control is carried out later in this report. The proposal is considered to achieve the landscaped character of the locality and is consistent with the outcomes of the control and therefore, a variation is acceptable in this particular circumstance.

Recommendation 5 - The applicant has undertaken a review of this recommendation and noted this would require substantial redesign of the development. The reasons put forward within the applicants written response are generally agreed with and are as follows:

"The views provided in response to Recommendation 1 demonstrate that adequate outlook and daylight are provided to the bedrooms adjacent to the circulation areas. Amenity has been improved by increasing the width of the courtyards on both levels. The views below demonstrate that excellent privacy is provided to these bedrooms as well. The architect has looked at alternative arrangements for the circulation, however it resulted in inferior spaces and outcomes. A key design direction and highly desirable attribute was to provide north facing living areas. This results in a linear circulation core along the southern side of the building to access all apartments, compromising a small number of bedrooms. This compromise has been mitigated by generous, open circulation spaces, adjacent planting, intersecting volumes, high quality materials and an abundance of natural daylighting. The architect would argue that this outcome is far superior to the alternative, a central core with apartments on the corners of the building and at least half of the apartments with no northerly aspect to their living areas."

Recommendation 6 - The applicant has provided montages and perspectives of how landscaping has been incorporated into the pedestrian entrance. The total amount of landscaping for the site is addressed in recommendation 4 above. The proposal is considered a suitable outcome and would not be refused based on the current design.

Recommendation 7 - The applicant has provided an updated BASIX and NatHERS to result in an improvement from 4.8 stars to 6.3 stars for Apartment 5 and 6.1 stars for Apartment.

Concluding Comment

The applicant has provided a response to the recommendations provided by DSAP by way of additional information, amendments and written responses advising how each recommendation has been attempted to be resolved. On balance, the applicant has provided a genuine attempt to resolve the recommendations where possible where those amendments would not result in a substantial redesign of the development, such as significant changes to the southern circulation core/access. There are not considered any issues left unresolved that would warrant refusal of the application in its current form and therefore, the proposal is recommended for approval.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1157603M_02 dated 9 April 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0005501720 dated 9 April 2021.)

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	65

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 objections subject to their standard 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:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land*

- Services Act 2013,*
- (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment:

Not within coastal wetland or littoral rainforest area.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

Not on land in proximity to coastal wetlands or littoral rainforest.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are*

*appropriate
responses
to, and
management
of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.*

Comment:

Not within the coastal vulnerability area.

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:

Not within the coastal environment area.

- (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:

Not within coastal environment area.

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 development has been designed as sited to avoid impact upon the matters described in (a) and Council is satisfied there will be no unreasonable impact upon the matters listed in (a).

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

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:

Does not increase coastal hazards.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes
Density controls for certain residential accommodation	1 dwelling per 200sqm	1 dwelling per 199sqm (7 dwellings on 1393sqm)	0.5%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.5A Density controls for certain residential accommodation	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Density controls for certain residential accommodation
Requirement:	1 dwelling per 200sqm of site area
Proposed:	1 dwelling per 199sqm of site area
Percentage variation to requirement:	0.5%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.5A - Density controls for certain residential accommodation 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 4.5A - Density controls for certain residential accommodation 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:

Strict compliance with the development control will result in one less dwelling on the site, but as the proposed development complies with the height, setback, landscape area and building envelope controls, whether there are six larger apartments or seven apartments with a mix of sizes in the development will not affect the overall form of the building. The proposed building will be consistent with the desired character of the locality whether there are six or seven apartments, and seven allows for a greater range of sizes and choice for residents and the local community. At 1393sqm the site area falls just short of the required 1400sqm under this control, and results in a density of 199sqm site area per unit. Council recently approved a development at 6 Foamcrest Avenue (adjacent to the subject site Consent No: N0313/17) with a density of 185sqm site area per unit, and 2-4 Foamcrest Avenue with a density of 196sqm site area per unit. The proposed development meets all the required amenity controls including height, setbacks, parking, private open space, landscape areas, solar access, privacy, and bulk and scale. The development site is immediately adjacent to the village centre, beach and transport facilities, and limiting the number of dwellings restricts the potential of the site to fewer households. Given the very small difference between the required and actual site area for seven

apartments, in this instance it is appropriate that the development proposal be judged on its merits.

*The requirement to build six rather than seven apartments would hinder the following objects of the Act:
(a) to encourage:*

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

*(ii) the promotion and co-ordination of the orderly and economic use and development of land,
Limiting the number of apartments has no impact on the overall form of the development or amenity of occupants and neighbours, but it limits the diversity of apartment types and encourages a greater size of apartment when the majority of residents for this type of building typology in this locality are looking for a compact floor area with a high level of amenity. In terms of environmental impact it is preferable to maximise the land resource, particularly when it is directly adjacent to existing infrastructure such as a shopping village and transport hub, by increasing density when it has little to no impact on amenity.*

It would be unreasonable to require strict compliance with the standard when Council has recently approved a development at 6 Foamcrest Avenue with a density of 185sqm site area per unit, and 2-4 Foamcrest Avenue with a density of 196sqm site area per unit, and which is less than that of the proposed development (199sqm site area per unit).

The proposed development meets all the required amenity controls including height, setbacks, parking, private open space, landscape areas, solar access, privacy, and bulk and scale. The proposed development is appropriate in scale for the medium density locality surrounding the village. One of the objectives of the zone is to provide a variety of housing types. Seven variably sized apartments provides more housing types than six larger apartments.

In terms of environmental impact the difference between six and seven apartments is minimal. The development meets all amenity requirements for occupants and neighbours and the locality has adequate infrastructure that is more than capable of servicing an additional household. The peninsula is an area that is dominated by the single detached house on large residential blocks and it will benefit by more diversity of housing types and a range of apartment sizes close the amenity of shops, recreational facilities and transport.

The assertions made by the application within the written request are generally agreed with by Council. To require the applicant to delete one unit due to a shortfall of 7sqm is considered unreasonable and unnecessary, given that the applicant has provided a building form that is consistent with the desired future character and general density previously accepted in recent approvals within the vicinity of the site.

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 Density Controls for certain residential accommodation development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.5A – ‘Density controls for certain residential accommodation’ of the PLEP 2014 are:

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

a) to achieve planned residential density in certain zones,

Comment:

The 1 per 200m² maximum dwelling yield is not a site specific development standard, but rather applies to all equivalent R3 zoned land throughout the locality (excluding Warriewood Valley which is site specific). Noting that there are unlikely to be any sites that are perfectly divisible by 200m², it would be reasonable to assume that some sites would more appropriately round down and there would be others that are reasonably rounded up, whilst the overall planned residential density is still achieved for the R3 zone as a whole. In relation to the subject site, the 1 per 200m² dwelling density equates to 6.965 dwellings which is considered to be reasonably rounded up to 7 dwellings in the circumstances of this case.

b) to ensure building density is consistent with the desired character of the locality,

Comment:

The proposal has generous landscaped setbacks with deep soil planting throughout to provide medium and tall canopy trees, to soften the building form as viewed from the street and adjoining properties. The area is characterised by medium density developments within a landscaped setting. The proposed development meets this character test by virtue of the well articulated building form and landscaping provided around the development.

Zone objectives

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

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

Comment: The proposal provides for 7 new dwellings which attributes to the housing stock for the community.

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

Comment: The proposed residential flat building provides for additional housing choice within the Newport Locality which is close to services and public open space.

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

Comment: Not applicable to this development.

- To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

Comment: Not applicable to this development.

Conclusion:

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

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

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

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

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) 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
Front building line	6.5m as established by north development	Basement 6.5m Ground floor 6.5m First floor 5.4m-6.5m
Rear building line	East - 4.2m	5.4m - 6.5m
Side building line	North - 3.6m - 4.05m	3m - 4.5m
	South - 4.2m	3.27m - 4.5m

Building envelope	North - 3.5m	Within
	South - 3.5m	Within
Landscaped area	50% (696.5sqm)	41% (575sqm) *44% with permitted variations

***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
A4.10 Newport Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.5 Dwelling Density and Subdivision - Medium Density Residential	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	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
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.15 Storage Facilities	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.12 Landscaped Area - General	No	Yes
D10.14 Fences - General	No	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The DCP requires that 2 spaces per unit are provided, where the units are a minimum 2 bedrooms.

All units have a minimum of 2 bedrooms. A total of 15 spaces are provided within the basement carpark for the residents (a surplus of 1 space).

The DCP Requires that 3 visitor spaces are provided for the development (1 space per 3 units rounded up).

The proposal provides 2 visitor spaces. However overall, the proposal does not result in a deficit of car spaces with the total amount of off-street spaces provided within the site.

The applicant has put forward that there is sufficient capacity within the street for visitor parking and the additional car space allocated as a residential space has more utility for the development.

Council's traffic engineers have raised no issue with the allocation of parking spaces or impact upon on-street parking as a result of this allocation. Therefore, this arrangement is supported.

C1.4 Solar Access

All living room windows and private open space areas are orientated to the north to maximum solar access for all units within the development. The applicant has provided solar access diagrams which demonstrate that the private open space and a reasonable portion of the living room windows of each unit will receive a minimum of 3 hours solar access.

The applicant has provided shadow diagrams demonstrating that the adjoining dwelling to the south will

receive 3 hours solar access mid-winter to a reasonable portion of the rear yard, noting that the area directly adjoining the rear facade of the dwelling on 73 Foamcrest is already self shadowed.

The provided shadow diagrams demonstrate that 3 hours of solar access will be retained to the northern elevation and western elevation of the dwelling on 73 Foamcrest between 12pm and 3pm, thus achieving 3 hours.

C1.5 Visual Privacy

The northern facing upper floor terraces are provided with landscape planter boxes and 1.7m height privacy screens to mitigate direct overlooking of the northern property and downward views to the private open space of the ground floor units. On the southern elevation entrance/circulation space, 1.7m privacy screens are provided to limit direct overlooking of the southern property.

Established landscape screening exists along the southern boundary of 79-83 Foamcrest Avenue, to limit looking between sites and the upper floor balconies of the units on the northern property. In addition, new landscape plantings are proposed along the northern boundary of the subject site to further obscure views between sites.

There is 11m of physical separation measured glass to glass between the upper elevation of the northern property, with 7m separation between the balcony of the subject site upper floor terrace. This physical separation, coupled with the established landscaping, privacy screens and planter boxes are considered sufficient to mitigate direct overlooking impacts between properties. This is also noting the balconies on the northern adjoining site are 'juliette' style balconies and not the principle private open space.

D10.7 Front building line (excluding Newport Commercial Centre)

DCP Control

The DCP requires the front setback to be 6.5m or consistent with the prevailing, whichever is the greater. As the existing development to the north has a setback of 5.4m (with a balcony at 5m), 6.5m is taken to be the numerical control to be applied to the subject site.

Merit Consideration

The ground floor and majority of the first floor of the proposed development is setback a compliant 6.5m. A small 'pop-out' section of the first floor is setback at 5.42m and represents a minor portion of the front facade. This element is taken to provide additional building articulation and break up the horizontal bulk of the building as viewed from the street. The development to the north has a balcony feature that is setback at 5m as an articulation feature and the proposed development is not inconsistent with this.

In consideration a variation, the proposal is assessed against the outcomes of the control as follows:

Achieve the desired future character of the Locality. (S)

Comment: The proposal has deep soil zone surrounding all perimeters of the building and the front setback area is predominantly deep soil zone with the exception of the driveway and bin storage area, which are both permitted within the front setback. The building as presenting to the street will be softened by landscape planting and setback consistent with the adjoining property, thus achieving the character of the locality.

Equitable preservation of views and vistas to and/or from public/private places. (S)

Comment: The proposed development will not result in a view impact.

The amenity of residential development adjoining a main road is maintained. (S)

Comment: The building does not adjoin a main road.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment: Significant trees within the road reserve are retained and no significant trees within the front setback area are required to be removed. New medium/tall height landscape plantings are proposed to soften the building form.

Vehicle manoeuvring in a forward direction is facilitated. (S)

Comment: Forward exit from the site is achieved as demonstrated in the submitted swept paths.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

Comment: The proposal is compliant with the 8.5m height limit and is in keeping with the surrounding buildings which are generally below the tree canopy level.

To encourage attractive street frontages and improve pedestrian amenity.

Comment: The articulating element which encroaches the front setback zone breaks up the bulk and scale by addition variation to the facade and providing an attractive, articulated building facade. Pedestrian pathway is provided from the street to the building entrance which is separate from the vehicle access.

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

Comment: The proposed front setback is consistent with the existing development to the north, which includes a 6.5m setback to the majority of the facade with a minor articulating element to provide visual interest.

The proposed development achieves the objectives of the control with the PDGP and therefore, the variation to the control is supported in this particular circumstance.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

DCP Control

The DCP requires for residential flat buildings, walls up to 3m in height are to have a setback of 3m. For walls above 3m in height the setback is to be in accordance with the following formula :

$$S = 3 + \frac{H - 2}{4}$$

where

S = the distance in metres

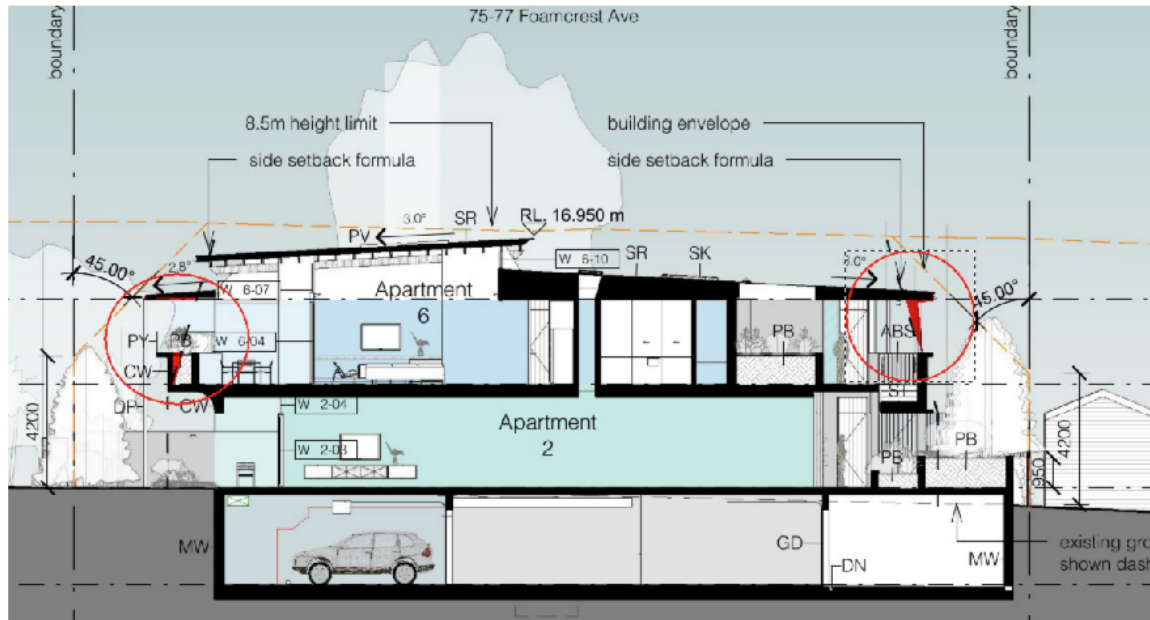
H = the height of the wall at that point measured in metres above existing ground level

The ground floor of the development (which is up to 3m in height) provides setbacks of 3.32m (south/side), 6.5m (east/rear) and 4.5m (north/side). The ground floor setbacks are compliant.

The upper floor setbacks present a minor non-compliance on the side elevations. These elements include projecting roof eaves, balcony balustrade and planter boxes and the southern circulation/entrance area which consists of an open element and privacy screen.

These encroaching elements are all open elements, not consisting of solid walls and therefore do not add unreasonable building bulk as viewed from the side boundaries or street. The DCP includes a variation clause for residential flat buildings which allow minor encroachments of roof eaves and the control to be varied where it can be demonstrated the objectives of the control are achieved without strict adherence to the standards.. Extract of the plans below showing the encroachments, including encroachment of roof eaves.





Merit Consideration

In considering the merits of the variation, the proposal is assessed against the outcomes of the control as follows:

To achieve the desired future character of the Locality. (S)

Comment: The proposed development is surrounded by deep soil landing to provide a building form within a landscaped setting, with landscaped front and rear setbacks which is consistent with the surrounding character and desired future character of the locality. The building is well articulated and uses robust materials to reflect the coastal setting of Newport. The proposal is consistent with the desired character of the Newport R3 Medium Density Residential area.

The bulk and scale of the built form is minimised. (En, S)

Comment: The encroaching elements are limited to open balconies with planter boxes, roof overhangs and the entrance lobby which does not have a solid wall, rather, privacy screening to provide cross ventilation and additional light for the southern side of the development. As the encroaching elements do not consist of solid walls, the non-compliance does not attribute to unreasonable building bulk and the side elevations of the building are considered well articulated to limit visual bulk and scale.

Equitable preservation of views and vistas to and/or from public/private places. (S)

Comment: The proposal does not result in a view impact.

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

Comment: The proposal does not result in a view impact for adjoining sites.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Comment: The proposed development mitigates direct overlooking of adjoining properties by use of planter boxes and privacy screening upon the upper level balconies on the northern elevation. The submitted shadow diagrams demonstrate the southern property will receive a compliant amount of solar access.

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

Comment: A comprehensive landscape plan is provided which demonstrates canopy tree planting can be provided around the development.

Flexibility in the siting of buildings and access. (En, S)

Comment: Access is maintained around the development.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment: No significant canopy trees are removed and landscape planting is retained along the rear boundary. Deep soil zones are provided around the building to allow for new canopy tree planting as demonstrated in the submitted landscape plan.

To ensure a landscaped buffer between commercial and residential zones is established. (En, S)

Comment: Not applicable to the subject development.

The proposed development has demonstrated that the outcomes of this particular control is achieved and a variation to the control may be supported in this particular circumstance.

D10.12 Landscaped Area - General

DCP Control

The DCP requires the site be provided with 50% landscaping. Council has assessed the proposal as consisting of 575.5sqm or 41.3% soft landscaping.

In accordance with the DCP clause, planter boxes with a minimum depth of 800mm and impervious areas less than 1m in width (pathways and the like) may be permitted on the landscaped portion of the site providing the outcomes of the control are achieved. When including the above variations, the proposal results in a total landscaped area of 611sqm or 44%.

The applicant's landscape calculations include the ground floor terrace open space areas in the variation calculation, bringing the total to 50% including these areas. However, the inclusion of 6% of the site area consisting of paved outdoor recreation areas in the landscape variation is only applicable to single dwelling houses, therefore not applying to this development.

Therefore, Council assesses the proposal as 44% when including the variations for the development.

Merit Consideration

In considering the merits of the control, the proposal is assessed against the outcomes of the control as follows:

Achieve the desired future character of the Locality. (S)

Comment: The character of the R3 Medium Density Residential zone and immediate vicinity is two storey, medium density residential development in a landscape setting with generous setbacks to allow for vegetation. The proposed development is consistent with this, providing a two storey form and landscape gardens surrounding the building.

The bulk and scale of the built form is minimised. (En, S)

Comment: The building is well articulated with stepped facade and a varied roof form. Open balconies are used to break up the facade and bulk of the building. The proposal is generally compliant with the setbacks and compliant with building envelope.

A reasonable level of amenity and solar access is provided and maintained. (En, S)

Comment: The proposal maintains a reasonable level of amenity with planter boxes and privacy screens used for the first floor terraces, along with established vegetation to limit views between sites. The adjoining site to the south will receive a compliant amount of solar access.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment: Significant vegetation along the rear boundary is retained and new landscape plantings consisting of medium and tall canopy trees are proposed to soften the building form.

Conservation of natural vegetation and biodiversity. (En)

Comment: The proposal does not result in the removal of any significant canopy trees which would be detrimental to the biodiversity value of the area.

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)

Comment: Council's development engineers are satisfied with the stormwater drainage for the site.

To preserve and enhance the rural and bushland character of the area. (En, S)

Comment: The site will provide new locally native landscape planting to enhance the landscape setting of the locality.

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

Comment: Council's stormwater engineers are satisfied with the stormwater management for the site and conditions have been recommended.

The proposed development is considered to achieve the desired character of the area, being a building within a landscaped setting with generous deep soil areas around the site. Notwithstanding the numerical non-compliance, the proposal achieves the outcomes of the control and a variation to the control is supported in this particular circumstances.

D10.14 Fences - General

The DCP requires front fencing at a maximum of 1m. The proposed front boundary fence is between

1.3m and 2m above ground level, varying with the site slope.

However, a variation clause exists for front fencing to be up to 1.8m where there is private open space visible from the street. A portion of the open space for Unit 1 is partially within the front setback area, and therefore fencing exceeding 1m may be considered subject to the variation requirements below.

- i. be setback a minimum of one metre for any fence higher than one metre (in the case of corner lots or lots with more than one frontage this setback may be varied based on merits); and
Comment: A setback of 1m is provided in front of the fencing with deep soil landscaping.
- ii. be articulated to provide visual interest and further opportunities for landscaping, and
Comment: The fencing is of high quality materials and landscaping is proposed within the 1m setback zone.
- iii. be screened by landscaping within the setback area; and
Comment: Landscaping is proposed, as detailed on the plans.
- iv. not restrict casual visual surveillance of the street, and
Comment: Casual surveillance is provided from the first floor of the development.
- v. provide a 45 degree splay (or equivalent) either side of any vehicular entrance, minimum dimensions of 2 metres by 2 metres; and
Comment: The fencing stops 2.5m short of the driveway to provide for the pedestrian access on the northern side of the driveway.
- vi. 50% or more of the fence is transparent.
Comment: The fencing proposed is 50% transparent.

Upon review of the eastern and western side of Foamcrest Avenue, there are a variety of fencing between 1m-1.5m with landscaping in front, however generally no front fencing above 1.5m. Therefore, to respect the character of the street, whilst providing some additional privacy, a condition of consent is recommended that the front fence shall not exceed 1.5m in height from the existing ground level. Front fencing of up to 1.5m will offer increased privacy for the residents within the development and is not inconsistent with the style of fencing provided along the street and the landscape treatment will provide an outcome suitable for the locality.

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 \$43,293 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,329,276.

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

- Public submissions;
- Setbacks and landscape open space
- Response and consideration of the Design Sustainability Review Panel
- Privacy and overshadowing.

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 DA2020/1695 for Construction of a Residential Flat Building on land at Lot 1 DP 22450, 77 Foamcrest Avenue, NEWPORT, Lot 2 DP 22450, 75 Foamcrest Avenue, NEWPORT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Staff and Contractor Parking

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

2. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 - Issue G	11/12/2020	Richard Cole Architecture
DA03 - Issue G	11/12/2020	Richard Cole Architecture
DA04 - Issue H	9/04/2021	Richard Cole Architecture
DA05 - Issue H	9/04/2021	Richard Cole Architecture
DA06 - Issue H	9/04/2021	Richard Cole Architecture
DA07 - Issue H	9/04/2021	Richard Cole Architecture
DA08 - Issue H	9/04/2021	Richard Cole Architecture
DA09 - Issue H	9/04/2021	Richard Cole Architecture
DA10 - Issue H	9/04/2021	Richard Cole Architecture
DA11 - Issue H	9/04/2021	Richard Cole Architecture
DA21 - Issue G	11/12/2020	Richard Cole Architecture
DA22 - Issue G	11/12/2020	Richard Cole Architecture
DA23 - Issue G	11/12/2020	Richard Cole Architecture
DA27 - Issue G	11/12/2020	Richard Cole Architecture
DA30 - Issue G	11/12/2020	Richard Cole Architecture
DA31 - Issue H	9/04/2021	Richard Cole Architecture
DA32 - Issue G	11/12/2020	Richard Cole Architecture
DA33 - Issue G	11/12/2020	Richard Cole Architecture
DA34 - Issue H	9/04/2021	Richard Cole Architecture
DA36 - Issue G	11/12/2020	Richard Cole Architecture
Plan of subdivision Sheet 1 of 4	27/11/2020	Copeland C. Lethbridge
Plan of subdivision Sheet 2 of 4	27/11/2020	Copeland C. Lethbridge
Plan of subdivision Sheet 3 of 4	27/11/2020	Copeland C. Lethbridge
Plan of subdivision Sheet 4 of 4	27/11/2020	Copeland C. Lethbridge

Engineering Plans		
Drawing No.	Dated	Prepared By
SW1 - Issue DA	27/11/2020	Barrenjoey Consulting Engineers
SW2 - Issue DA	27/11/2020	Barrenjoey Consulting Engineers
SW3 - Issue DA	27/11/2020	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1157603M_02	9/04/2021	Insight Energy
Geotechnical Report No 2020-202, Issue 0	12/11/2020	Crozier Geotechnical Consultants
Aboricultural Impact Report Ref 20520	15/12/2020	Raintree Consulting
Acoustic Report 200424 Rev A	14/12/2020	JHA Services
Access Report 220271	12/12/2020	ABS Access
BCA Report 200527	11/12/2020	East Coast Approvals Group Pty Ltd
Fire Engineering Letter 2020278-L01-V02	11/12/2020	Fire Safety Studio

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LA-00 to LA-07 (inclusive)	11/12/2020	Karen Ruthvan Landscape Architect

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	15/12/2020	Martin Cook

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

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

3. Prescribed Conditions

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$43,292.76 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 \$4,329,276.00.

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

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

The applicant is to lodge a bond of \$10000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent. The works include the construction of a stormwater inlet pit within the road and 375mm RCP connection.

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

Reason: Protection of Council's infrastructure.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION
CERTIFICATE****8. On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for groundcovers and grasses
- ii) 600mm for shrubs

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

9. Traffic Management and Control

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

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

10. Car Parking Standards

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1:2004.

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

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

11. Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Transport Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 7.30-9.00am and 4.30-6.00pm. Truck movements

must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Seven (7) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

12. **Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

13. **Pedestrian sight distance at property boundary**

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

14. **Amendments to the approved plans**

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

- The front boundary fencing is to be a maximum height of 1.5m, measured from the existing ground level.

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. **Building Code of Australia Report**

The Building Code of Australia fire safety measures as detailed and recommended in the Building Code of Australia Assessment Report prepared by the East Coast Approvals Group dated 11/12/2020, Report Ref No. 200527 and the Fire Engineering Letter prepared by Fire Safety Studio, dated 11/12/2020, report reference 2020278-L01-v02 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.

16. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's **WATER MANAGEMENT POLICY**, and generally in accordance with the concept drainage plans prepared by Barrenjoey Consulting Engineers, drawing number SW1DA, SW2DA, SWDA, dated 27/11/2020. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) or RPENG (Professionals Australia) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. The OSD storage volume is to be increased by 2 cumecs.
- ii. 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 stormwater management arising from the development.

17. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the 375mm stormwater line and inlet pit in **Foamcrest Avenue** which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information: The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

18. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

19. **Vehicle Crossings Application**

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

the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

20. Waste Storage Area

- Any doors fitted on the Residential Waste Storage Area, pathway and access must be:
 - a) A minimum width of 1200mm.
 - b) Able to be latched in an open position
 - c) Unobstructed by any locks and security devices
- A tap for washing out the bins/binroom is to be provided nearby. Tap must not be located inside the bin room. Wash water can either be drained to the sewer or into the garden.
- No plant or infrastructure such as utility meters, pumps, air conditioning compressors etc is permitted to be located in the bin room.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

21. Pre-commencement Dilapidation Report

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

22. Compliance with Standards

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access - New

building work**

(m) AS 1428.2 – 1992*, Design for access and mobility - Enhanced and additional requirements
- Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website www.hreoc.gov.au/disability_rights/buildings/good.htm. <www.hreoc.gov.au/disability_rights/buildings/good.htm>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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. (DACPLC02)

23. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

24. **Project Arborist**

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

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

Existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist.

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

- i) section 2.2 Recommended tree management & protection principles

All tree protection measures specified must:

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

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

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

Reason: Tree protection.

25. **Tree Removal Within the Property**

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

- i) tree 14 - She Oak,
- ii) tree 20 - Coast Banksia,
- iii) tree 21 - Bottlebrush.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

- i) the following Exempt Species are proposed for removal under the species exemption: 3, 5, 6, 7, 8, 10, 13, 15, 18 and 19.
- ii) the following Exempt Species are proposed for removal under the height exemption: 4, 9, 16 and 22.

Reason: To enable authorised building works.

26. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

27. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those

properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: 79-83 Foamcrest Avenue, 403 Barrenjoey Road, 405 Barrenjoey Road and 73 Foamcrest Avenue.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

28. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

29. **Noise Assessment**

Prior to the issuing of an occupation certificate, a noise assessment must be undertaken by a suitably qualified person, and a report submitted to the Principal Certifying Authority, that any external mechanical plant complies with projected noise trigger levels as noted in the acoustic report numbered 200424 dated 14/12/20 by JHA.

Reason: To preserve the amenity of surrounding properties (DACHPDPC5)

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

31. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

- c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

32. **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.

33. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

34. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

35. **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);

- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

36. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

37. **Footpath Construction**

The applicant shall reconstruct all damaged lifted sections of existing concrete footpath within the Foamcrest Ave frontage. The works shall be in accordance with the following:

- (a) Councils engineering drawings.
- (b) Council is to inspect the formwork prior to pouring of concrete . Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

38. **Notification of Inspections (infrastructure works to be handed over to Council)**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

39. **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.

40. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

41. **Requirement to notify about new Acid Sulfate Soils evidence**

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: protection of the environment

42. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan dated 15 December 2020.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

43. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

44. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plans.

Prior to the issue of any Occupation Certificate details (from a landscape architect or landscape designer) 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.

45. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of any Occupation Certificate a report prepared by the project arborist shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

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

Reason: Tree protection.

46. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with the approved drainage plans, Councils Water Management policy and all relevant Australian Standards and Codes by the design 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.

47. **Post-Construction Road Reserve Dilapidation Report (Major Development)**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

48. **Basement Garage Traffic Signal System**

To prevent conflicting vehicle flows on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed at each ramp entry, designed to warn drivers about to enter the road of any conflicting vehicle approaching.

The signal system must;

- o be clearly visible from ramp entrances,
- o is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,
- o Incorporate linemarking to delineate traffic flow and nominate waiting bay locations to allow vehicles to overtake another.

Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Principal Certifying Authority that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of any Occupation Certificate issued for the development.

Reason: To ensure no vehicle conflicts within the basement carpark.

49. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

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

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

50. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

51. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

52. **Garbage and Recycling Facilities**

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

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity

air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

53. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines

(https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

54. **Fire Safety Matters**

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

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

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

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

55. **Lot Consolidation**

Prior to the issue of any occupation certificate, the two sites 75 and 77 Foamcrest Avenue shall be consolidated.

Evidence that the lots have been consolidated through the Lands Registry Services shall be provided to the Principle Certifying Authority prior to the issue of any occupation certificate.

Reason: To ensure the orderly development of land.

56. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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 waste and recycling facilities are provided.

57. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

58. **Positive Covenant for Council and Contractor Indemnity**

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

59. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

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

60. **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.

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

61. **Landscaping adjoining vehicular access**

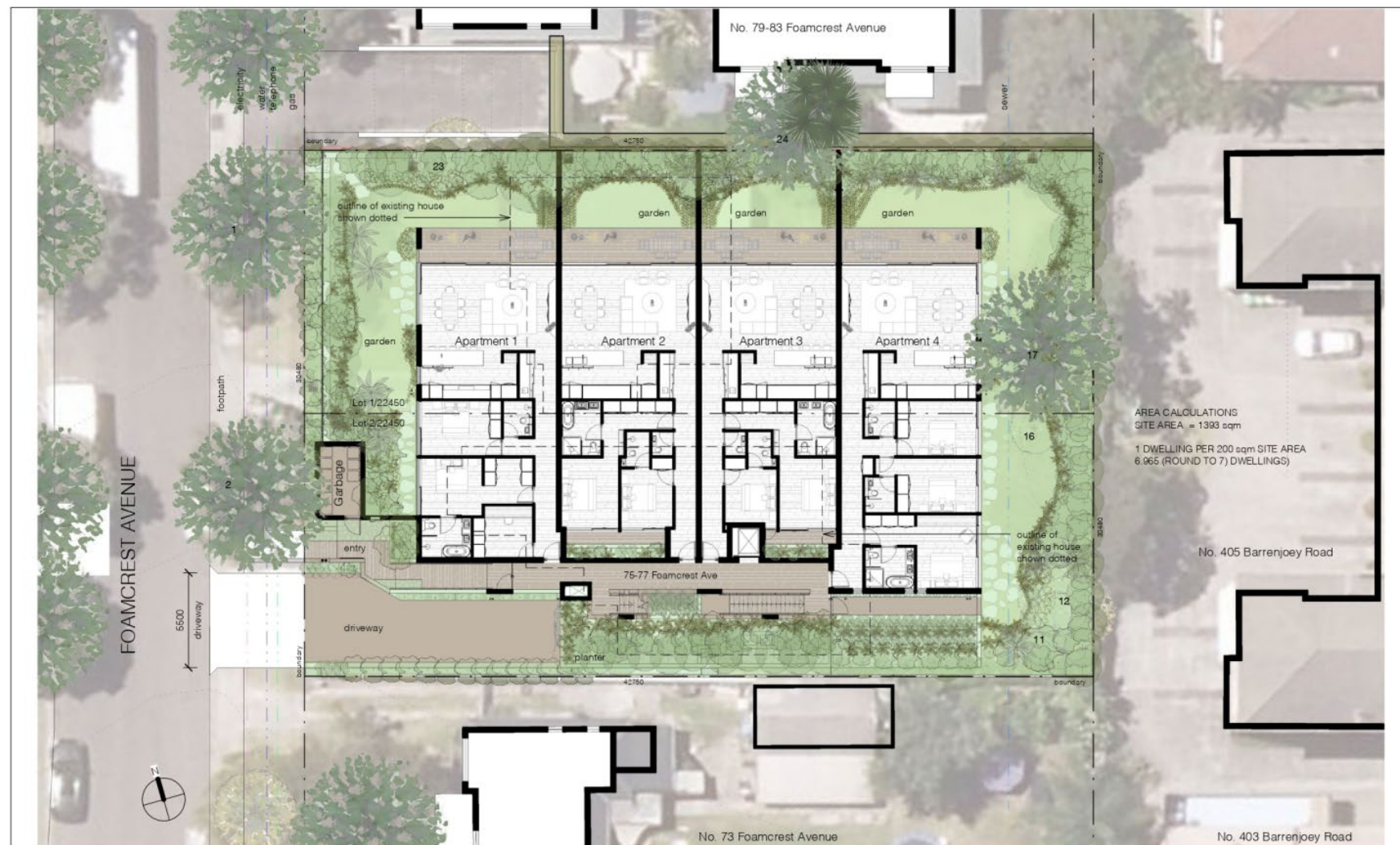
The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm

Reason: To maintain unobstructed sight distance for motorists.

62. **Sight lines within carparks**

The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists.



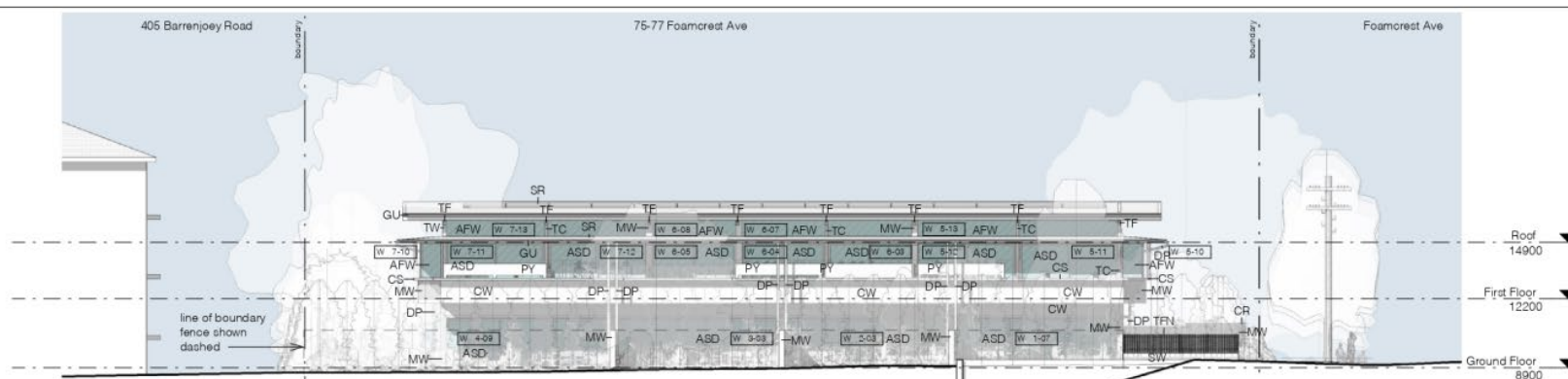
139 PALMGROVE ROAD, AVALON BEACH NSW 2107
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e mailto:richard@richardcolearchitecture.com.au
w www.richardcolearchitecture.com.au
asn 003 598 415 abn 58 003 598 415
nominated architect - Richard Cole & Co (Arch) (Hons 1) & Arch (Hons 1) Reg. No. 6538

No.	Revision Description	Date
A	Concept Plans	11/09/2020
B	Revised Concept Plans	22/10/2020
C	Revised Concept Plans - Accessibility Update	08/11/2020
D	Concept Plan for BASIX Review	16/11/2020
E	Preliminary DA	19/11/2020
G	Development Application	11/12/2020

REEF APARTMENTS
DEVELOPMENT APPLICATION
75-77 Foamcrest Avenue, Newport
Provent Property Group Pty Ltd

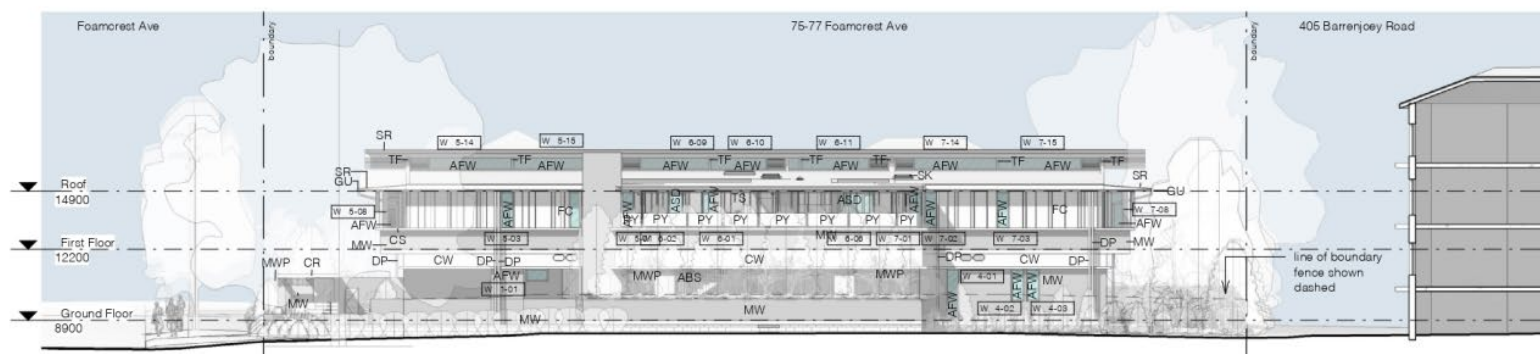
Site Plan

Project number	1612	Checked by	RC
Date	December 2020	Scale	1 : 200
Drawn by	KW		DA02



1 DA Elevation - North
1:200

ABS Aluminium Balustrade Screen	DP Downpipe	SK Skylight	TS Timber Screen
AFW Aluminium Framed Window	FC Fibre Cement Cladding	SR Steel Roofing	TW Timber Framed Wall
ASD Aluminium Framed Sliding Door	GU Gutter	SW Stone Wall	
CR Concrete Roof	MW Masonry Wall	TC Timber Column	
CS Concrete Slab	MWP Perforated Masonry Wall	TF Timber Framing	
CW Concrete Wall	PY Privacy Screen	TRN Timber Fence	



2 DA Elevation - South
1:200

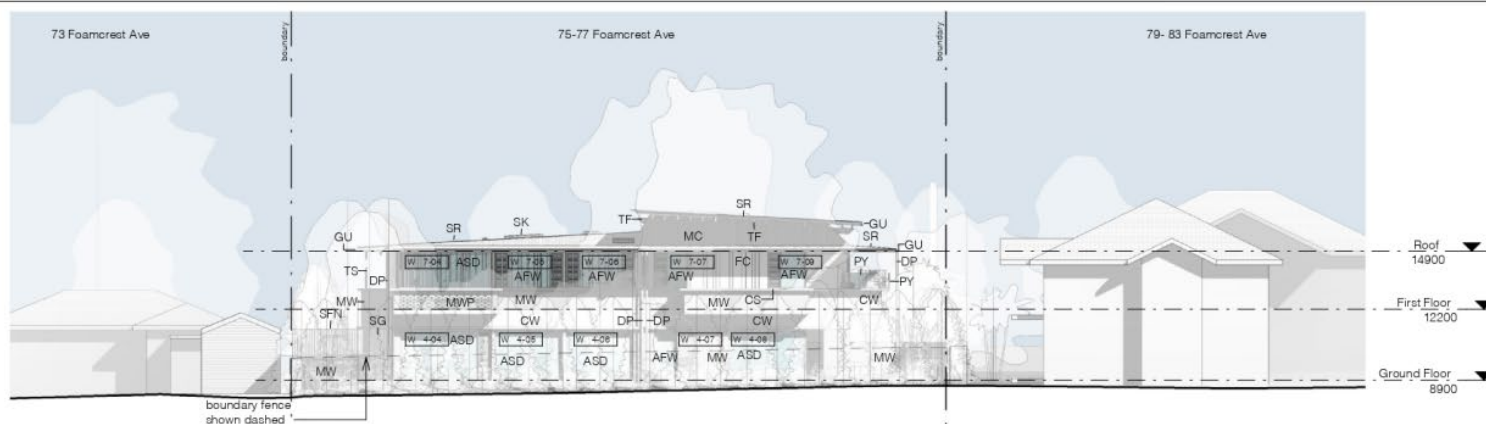
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asn 003 598 415 abn 58 003 598 415
nominated architect - Richard Cole & Co (Arch) (Hons) 1/18 Arch (Hons) 1/18 Reg. No. 6538

No.	Revision Description	Date
B	Revised Concept Plans	22/10/2020
C	Revised Concept Plans - Accessibility Update	03/11/2020
D	Concept Plan for BASIX Review	16/11/2020
E	Preliminary DA	19/11/2020
G	Development Application	11/12/2020
H	Revised Development Application	09/04/2021

REEF APARTMENTS
DEVELOPMENT APPLICATION
75-77 Foamcrest Avenue, Newport
Provent Property Group Pty Ltd

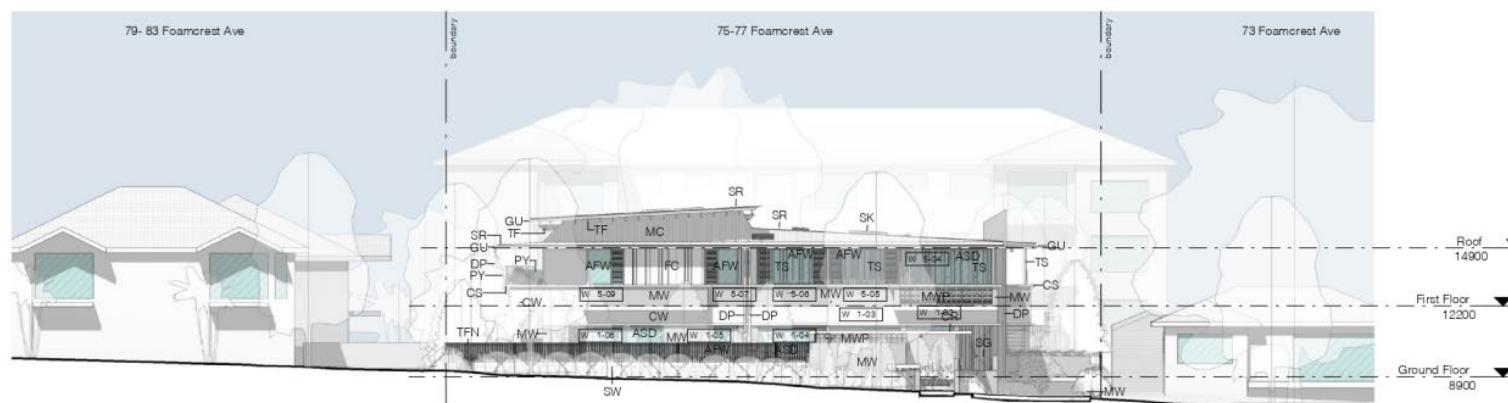
Elevations

Project number	1612	Checked by	RC
Date	December 2020	Scale	1:200
Drawn by	KW		DA07



1 DA Elevation - East
1:200

AFW Aluminium Framed Window	DP Downpipe	MWP Perforated Masonry Wall	SR Steel Roofing
ASD Aluminium Framed Sliding Door	FC Fibre Cement Cladding	PY Privacy Screen	SW Stone Wall
CR Concrete Roof	GU Gutter	TF Timber Framing	TFN Timber Fence
CS Concrete Slab	MC Metal Cladding	TS Timber Screen	
CW Concrete Wall	MW Masonry Wall		



2 DA Elevation - West
1:200

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asn 003 598 415 abn 58 003 598 415
nominated architect - Richard Cole @ Cole Architects (Hons 1) B Arch (Hons 1) Reg. No. 6538

No.	Revision Description	Date
B	Revised Concept Plans	22/10/2020
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E	Preliminary DA	19/11/2020
G	Development Application	11/12/2020
H	Revised Development Application	09/04/2021

REEF APARTMENTS
DEVELOPMENT APPLICATION
75-77 Foamcrest Avenue, Newport
Provent Property Group Pty Ltd

Elevations

Project number	1612	Checked by	RC
Date	December 2020	Scale	1:200
Drawn by	KW		DA08

ITEM 3.5 **DA2020/1571 - 54 FRANCIS STREET, MANLY - ALTERATIONS
AND ADDITIONS TO A DWELLING HOUSE INCLUDING A
SWIMMING POOL**

REPORTING MANAGER Anna Williams
TRIM FILE REF 2021/281254
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 DA2020/1571 for alterations and additions to a dwelling house including a swimming pool on land at Lot 14 Sec E DP 4449, 54 Francis Street, Manly, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1571
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 14 DP 4449, 54 Francis Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
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:	Gregory Piers Timothy Hackman Joeline May Hackman
Applicant:	Novam Design Studio Eyal Snehor
Application Lodged:	09/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/03/2021 to 30/03/2021
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,142,179.50

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and alterations and additions to the existing dwelling, as follows:

Lower Ground

- demolition of the existing access path/stairs, front deck, internal stairs, bathroom,
- additional excavation to the south-east
- alterations and additions to facilitate a formal entrance lobby, relocated staircase, and an enlarged bedroom and bathroom

- construction of a new swimming pool
- construction of a new front fence, access path, excavated bin store and pool equipment store
- construction of a new enlarged front deck
- construction of new side access stairs

Ground

- demolition of all internal walls, and a portion of the southern side external wall
- demolition of the existing front deck
- demolition of the existing roof
- replacement of all existing windows and doors
- alterations and additions to facilitate an enlarged and relocated kitchen, the deletion of two bedrooms, an enlarged laundry, and the inclusion of an ensuite and WIR for the Master bedroom
- construction of a new, enlarged front deck
- increased ceiling heights throughout

Level 1

- construction of a new upper level comprising two bedrooms, one bathroom, a family room and balconies at the front and rear

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.7 First Floor and Roof Additions
 Manly Development Control Plan - 4.4.2 Alterations and Additions

SITE DESCRIPTION

Property Description:	Lot 14 DP 4449 , 54 Francis Street MANLY NSW 2095
Detailed Site Description:	<p>The site trapezoidal in shape, with a 9.45m wide frontage to Francis Street to the west, a maximum depth of 41.80m and a total area of 387.3m². A one and two storey dwelling is situated towards the rear of the site, with a detached single garage at the north-west front corner of the site. Vehicular and pedestrian access is gained via Francis Street. With the exception of a mature Cheese Tree located within the front setback of the site, the site is generally free of any significant vegetation. A mature Jacaranda is located in the road reserve immediately in front of the site.</p> <p>The site is surrounded by low density residential development of varying age, style and character. Graham Reserve and Manly Aquatic Centre are located in walking distance down slope of the site.</p>

Map:



SITE HISTORY

On 3 March 2020, a prelodgement meeting was held with Council to discuss the proposal. The prelodgement notes advise:

Streetscape

While majority of the proposed development demonstrates consistency with streetscape requirements, the proposed alterations to the existing garage and pedestrian entry are not considered to appropriately demonstrate consistency with the predominant built form along the street frontage.

The predominant built form along Francis Street, in terms of on-site parking facilities, are single width hardstand spaces or single carports. There are very few examples of double width on-site parking facilities.

The proposal to enlarge the existing garage to form a double garage is not considered to maintain existing scenic amenity or visually improve the streetscape. There is an existing exposed rock outcrop that would be required to be removed to cater for the proposed alterations to the site frontage. The removal of this natural element to be replaced by a new built form is not considered appropriate.

The overall extent of the altered garage and pedestrian entry is considered to dominate the street frontage and will likely set an undesirable precedent for similar structures in the locality.

An alternative design solution to reduce the bulk, scale and visual dominance of the built form along the site frontage is recommended.

Sunlight Access and Overshadowing

The proposed development is appears to increase the area of overshadowing of the southern adjacent property. Compliance with the control requirements must be demonstrated. If full numerical compliance cannot be achieved, variation to the control may be accepted if it can be reasonably demonstrated that the objectives of the control are able to be achieved.

4.1.4.2 Side Setbacks and Street Frontages

The proposal does not demonstrate compliance with this control. It is acknowledged the existing dwelling does not comply with the control.

Notwithstanding the non-compliance, variation to the control may be accepted if it can be reasonably demonstrated that the objectives of the control are able to be achieved.

4.1.4.4 Rear Setbacks

The proposal does not demonstrate compliance with this control. It is acknowledged the existing dwelling does not comply with the control.

Notwithstanding the non-compliance, variation to the control may be accepted if it can be reasonably demonstrated that the objectives of the control are able to be achieved.

4.1.5.2 Landscaped Area

The proposal does not demonstrate compliance with this control.

Land that may be classified as landscaped area must have a soil depth of at least 1m. As such, any area above the garage cannot be included in the calculation unless it can be demonstrated the soil depth above the garage is at least 1m.

Effort should be made to increase the amount of landscaped area. However, variation to the control may be accepted if it can be reasonably demonstrated that the objectives of the control are able to be achieved.

On 9 December 2020, the subject application was lodged with Council.

On 16 February 2021, Council requested additional information to address concerns relating to:

- The extent of works within the front setback,
- Non-compliant side and rear setbacks and associated overshadowing,
- Landscaped area non-compliance,
- Inconsistencies regarding the height of the development, and
- Visual privacy.

On 22 February 2021, the assessing officer met with the applicant, the property owners and their town planner on site to further communicate concerns with the proposal.

On 10 March 2021, amended plans were received demonstrating the deletion of works proposed to the garage, and alterations to the design of the upper floor.

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	Mainly 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 can be addressed via a condition of consent.</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 works to the garage (since removed), non-compliant setbacks, over shadowing, landscaped area non-compliance, visual privacy and inconsistencies in the information provided.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Structures. This matter can be addressed via a condition of consent. / This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
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 requirements of the MDCP 2013 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/03/2021 to 30/03/2021 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 7 submission/s from:

Name:	Address:
Ms Amanda Fleur Delaforce	36 Arthur Street FAIRLIGHT NSW 2094
Mr Andrew Alexander Petersen Mrs Sheri-Anne Maree Petersen	52 Francis Street MANLY NSW 2095
Peter John Conroy	56 Francis Street MANLY NSW 2095
Ms Patricia Monica Barone	56 Francis Street MANLY NSW 2095
BBF Town Planners	1 / 9 Narabang Way BELROSE NSW 2085
Mr Frank Mandin	2/35 Herbert Street MANLY NSW 2095
Mr William Fleming	1 / 9 Narabang Way BELROSE NSW 2085

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

- Visual privacy**
 Concerns have been raised from adjoining and nearby properties at 36 Arthur Street, 52 Francis Street and 56 Francis Street with regards to overlooking arising from the proposed development. As discussed with regard to clause 3.4.2 of MDCP 2013, the proposed development does not adequately mitigate overlooking from the rear upper level balcony and this element of the proposal is not supported.
- Overshadowing**
 Submissions have been received in objection to the overshadowing arising from the works proposed and the lack of information furnished in relation to solar access. As discussed in further detail with respect to clause 3.4.1 of MDCP 2013, the application has not satisfactorily demonstrated that compliance with the minimum provisions or objectives of the control have been achieved, nor that the proposal has been reasonably designed to minimise resultant impacts. The proposed development is recommended for refusal in this regard.
- Setback non-compliance**
 Objections have been received with respect to the maintenance and intensification of existing non-compliance setbacks, and associated impacts upon privacy, solar access and visual impact. As detailed under clause 4.1.4 of MDCP 2013, the non-compliant setbacks proposed are considered to be unreasonable in these circumstances, and warrant the refusal of the application in this regard.
- Wall height non-compliance**
 A submission has been received from the adjoining property to the north in objection to the non-compliant height of the walls of the northern elevation. The non-compliance has been considered with respect of the objectives of clause 4.1.2 of MDCP 2013, and noting the absence of any unreasonable impact, the non-compliance is not considered to warrant the refusal of the application.
- Safety**
 A submission has been received raising concerns with regard to the lack of casual surveillance

of the public domain afforded by the proposal. The principle of 'safety in design' is discussed in further detail with respect to clause 3.10.1 of MDCP 2013, and in these circumstances, the minimal sight lines proposed are not considered to warrant the refusal of the application.

- **Acoustic privacy**

Submissions have been received from the owners of the properties to both sides, raising concerns with regard to the noise levels of the pool pump. Should the application be approved, conditions of consent can be imposed to ensure that the pump is encased in a sound proof container, and that noise levels are maintained below acceptable thresholds.

- **Streetscape character**

Submissions have been received in objection to the impact of the development upon the existing streetscape character. These objections relate to two distinct elements of the proposal; namely the works proposed along the front boundary and the proposed roof form.

The works to the front boundary are considered in further detail with respect to clauses 4.1.4 and 4.1.10 of MDCP 2013, and are found to be contrary to the objectives of these controls. If the proposal was to be approved, conditions could be imposed to delete or amend this aspect of the development. However, noting the recommendation of refusal, the dominance of the frontage of the site has been included as a reason for refusal.

The proposed incorporation of skillion roof forms is discussed in further detail with respect to clauses 3.4.1 and 4.1.7 of MDCP 2013. Whilst technically inconsistent with the provisions of clause 4.1.7 of MDCP 2013, the proposed skillion roof form is not inconsistent with other roof forms within the visual catchment and the proposal does not warrant refusal in this regard. However, the pitch point of the skillion roof is somewhat excessive and directly attributes to additional overshadowing, and is not supported in this regard.

- **Inconsistencies in documentation**

Submissions have been received raising concern with inconsistencies in the information provided. For example, the ground floor plan includes a notation seemingly proposing a new fixed window on the southern elevation of the kitchen, yet no window is shown in elevation. Another example is the notation of 'existing timber deck' on the ground floor front balcony, which is shown to be demolished and rebuilt at a larger size. Should the application be approved, conditions could be imposed to avoid any inconsistencies.

- **Characterisation of development**

A submission has been received in objection to the characterisation of the proposal as alterations and additions to an existing dwelling. As discussed in further detail with regard to clause 4.4.2 of MDCP 2013, the characterisation of the development is considered reasonable in these circumstances.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported, with conditions.</p> <p>This application is for the alterations and additions to an existing residential dwelling. Alterations include the excavation and demolition of the existing garage walls and structures, as well as the reconfiguration of the internal layout of the dwelling to create a more</p>

Internal Referral Body	Comments
	<p>open layout. Additions are inclusive of the construction of a new driveway and garage, new walls, as well as an additional floor to accommodate new bedrooms, bathroom, balcony and family area.</p> <p>Councils Landscape Referral Section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping <p>A Landscape Plan has been provided with the application and the proposed works include the transplanting of an existing tree, in-ground planting of shrubs, grasses and groundcovers, as well as on-slab planting with shrubs, grasses and groundcovers.</p> <p>The Statement of Environmental Effects provided notes that the proposal does not require the removal or pruning of trees within the site or on adjoining properties. This is clarified in the Arboricultural Impact Assessment which identifies no prescribed trees are proposed for removal in order to accommodate the proposed works.</p> <p>The Arboricultural Impact Assessment has identified a total of seven trees within, or within close proximity to the site. One tree is located within the road reserve, two trees are located within neighbouring properties, with the remaining four trees located within the boundaries of the subject site. Of the four trees located within the site, three trees, Trees No. 3, 5 and 6, are exempt species or exempt as heights are below 5m, and therefore do not require Council's approval to be removed. The remaining tree on site, Tree No. 4, is located adjacent to the southern boundary towards the front of the property. Tree No. 4 has a high landscape significance and has been proposed for retention. It is noted that there are significant works to be undertaken within the Tree Protection Zone (TPZ) and Structural Root Zone (SRZ), including the removal of existing retaining walls and garden area, and the construction of new walls and pathway. These impacts are likely to be significant, and will necessitate the need for minimal excavation works, further engineer advice to ensure the cut face of the soil profile remains stable, drip irrigation and mulch to the existing tree, as well as tree root investigations, all of which has been suggested and outlined within the Arboricultural Impact Assessment. If the tree root investigation and tree root map confirm major roots will be impacted by the works, an alternative alignment or re-design shall be required. In addition, a Project Arborist shall be required to supervise all excavation, demolition and construction works within the TPZ and SRZ, and to ensure all tree protection measures suggested in the Arboricultural Impact Assessment are fulfilled and in place.</p> <p>The retention of Tree No. 4, as well as all trees in the road reserve and adjoining properties is necessary in order to satisfy control 3.3.2.</p>

Internal Referral Body	Comments
	<p>A key objective of this control is "to protect and enhance the scenic value and character that trees provide". The completion of landscape works as proposed on the Landscape Plans is also necessary to satisfy control 3.3.1 and 4.1.5, as key objectives include "to encourage appropriate tree planting and maintenance of existing vegetation", and "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and surrounding area". In addition to this, it is important for the proposed built form to be softened by landscaping where possible.</p> <p>It is worth noting that the Architectural Plans provided indicate there is no change to the total open space as a result of the proposed works. These plans indicate that the total open space has an area of 250m² (greater than 55% of site area), with the landscape area within having a total area of 137.5m² (greater than 35% of open space). This therefore complies with the development controls. Concern is raised regarding the calculation of this, as in order for areas to be counted as landscape they must have a minimum soil depth of 1m. The front area of the garden, specifically above the proposed garage has varying soil depths. Planters along the edge have a soil depth of 1m, and are therefore counted in the calculation, however the turfed area has a soil depth of 530mm, and therefore should not be calculated in the total landscape area. With that in mind, the total landscape area without this turfed area should still comply with the development controls, based on the area calculations provided on the Architectural Plans.</p> <p>The landscape component of the proposal is therefore acceptable subject to the following conditions.</p>
Strategic and Place Planning (Heritage Officer)	<p>Supported, no conditions.</p> <p>The proposal has been referred to Heritage as the subject site is within the vicinity of a heritage item:</p> <p>I53 - Street Trees - Francis Street (near corner of Arthur Street)</p> <p><u>Statement of significance:</u> Unique plantings in a streetscape</p> <p><u>Physical description:</u> Two plantings of Cabbage Tree Palms (<i>Livistonia Australis</i>). Good specimens. These appear to be private plantings in a public space.</p> <p>The proposal seeks consent for alterations and additions to an existing dwelling. The heritage items are located to the south of the subject property within the road reserve outside 46-50 Francis Street. While works are proposed to the road reserve outside the subject property, they are limited to only this section. Thus the proposal is considered to not impact upon the heritage street trees or their significance.</p>

Internal Referral Body	Comments
	Therefore, Heritage raises no objections and requires no 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. Should the application be approved, these recommendations can 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 continued residential land use proposed.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate A366307_02 dated 4 March 2021). Should the application be approved, a condition can be included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

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. Should the application be approved, these recommendations can be included as a condition of consent.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.4m	-	Yes
Floor Space Ratio	0.6:1	0.59:1	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

6.2 Earthworks

In accordance with clause 6.2(3) of MLEP 2013, before granting development consent for earthworks, Council must consider the following matters:

- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) *the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) *the quality of the fill or the soil to be excavated, or both*

Comment: No fill proposed. The excavated material will be processed according to the Waste Management Plan for the development.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: No fill proposed. The excavated material will be processed according to the Waste Management Plan for the development.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

6.4 Stormwater management

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

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

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

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

Comment: On-site stormwater retention has been incorporated into the development. However, it is noted that the stormwater plan has not been updated to relate to the revised architectural plans. Should the application be approved, conditions can be imposed to require updates to reflect that ultimately approved by Council

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

Comment: Subject to conditions of consent, the consent authority can be satisfied that stormwater runoff on the site can be appropriately managed and that the proposed development will not adversely impact adjoining properties, native bushland or receiving waters.

Manly Development Control Plan

Built Form Controls

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Built Form Controls - Site Area: 387.3m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling	1 dwelling	-	Yes
	Dwelling Size: 117m ²	228m ²	-	Yes
4.1.2.1 Wall Height	N: 7.2m	8.2m	1m	No
	S: 7.1m	6.6m	-	Yes
4.1.2.2 Number of Storeys	2	3	1	No
4.1.2.3 Roof Height	Height: 2.5m	1m	-	Yes
	Parapet Height: 0.6m	0.5m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (parking): Nil Prevailing building line (dwelling): 6m	Garage: Nil (existing) Dwelling: 14m Pool: 7m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 1.3m - 2.7m	1m	1.7m (max)	No
	S: 1m - 2.2m	0.83m - 1.6m	1.4m (max)	No
	Windows: 3m	1m	2m	No
4.1.4.4 Rear Setbacks	Prevailing building line: 12m	Ground: 4.2m (existing) Level 1: 6.5m - 8m	7.8m (max) 5.5m (max)	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	55% of site area (213m ²)	62% 242m ²	-	Yes
	Open space above ground 25% of total open space (53m ²)	32% 68.5m ²	29% 15.5m ²	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (74.55m ²)	18% 39.3m ²	53% 35.25m ²	No
	1 native trees	1 trees	-	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	>18m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	48% 4.6m	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	inground	-	Yes
	1m curtilage/1.5m water side/rear setback	1.8m	-	Yes
Schedule 3 Parking and Access	2 spaces	1 space	1	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	No
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	No	No
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The application seeks to retain the existing single garage, which is sited with a nil setback to both the front and the northern side boundaries. The existing garage features a landscaped terrace above,

comprising turf with hedging plants along both boundaries. The remainder of the frontage comprises a solid fence, built around an existing rock outcrop, with an open-style gate. The existing arrangement is somewhat of an anomaly in the streetscape, which is otherwise characterised by landscaped setbacks and open or setback parking structures.

The application proposes excavation adjacent to the existing garage to provide for a bin store, pool equipment store and an enlarged pedestrian access point. The application also proposes new solid fencing and an access gate reaching up to 2.2m above existing ground level along the front boundary. The application is also somewhat unclear in relation to fencing/balustrading above the garage. The plans provided demonstrate an existing vertical batten balustrade sited with a nil setback to the street frontage, however the existing mesh balustrade is setback from the leading edge of the garage, behind existing hedging.

Given the extent of works proposed across the site as a whole, it is considered that this should be the opportunity to improve the streetscape aesthetic of the site, in a manner that is more consistent with that anticipated by MDCP 2013. In such circumstances where a development seeks to retain a non-compliant structure with a nil setback to both the front and side boundary, and increase the bulk and scale of the dwelling beyond, all efforts should be made to ensure that the remainder of the frontage remains free of development, to maximise opportunities for landscaping to soften the visual impact of the development. However, the proposed development seeks to further intensify the dominance of structures within the front setback and is inconsistent with a raft of provisions prescribed by the control, including:

- garbage areas are to be unobtrusive and integrated into the design of the building,
- development should recognise and complement predominant streetscape qualities and contribute to the character of the local area,
- visually improve existing streetscapes through innovative design solutions, and
- the siting, height and form of front fences should reflect the fencing characteristic of the locality, particularly those of adjacent properties.

The dominance of the front setback is considered to contribute to the refusal of the subject application.

3.4.1 Sunlight Access and Overshadowing

The application was supported by shadow diagrams demonstrating that the proposal will result in additional overshadowing of adjoining properties at 52 Francis Street (south), 35 Herbert Street (east) and 36 Arthur Street (south-east) at varying times during midwinter. During the course of the assessment of this application, Council requested further detailed shadow diagrams to assist in the assessment of the proposal in accordance with the requirements of this control. In particular, Council requested revised shadow diagrams, inclusive of the entirety of the affected sites (to quantify the proposed impact) at hourly intervals between 9am and 3pm in midwinter. This information was not provided by the applicant, and the information before Council remains deficient in this regard.

However, the following impacts can be deduced from the information provided:

- The proposal will result in additional overshadowing of the private open space of the adjoining dwelling to the south (52 Francis Street) throughout the entirety of the day in mid-winter. Whilst an exact calculation has not been made, it appears that the proposal will obstruct more than 1/3 of existing sunlight available within the rear private open space at midday in midwinter, contrary to the requirements of this control.
- The proposal will result in overshadowing of windows associated with living rooms of the adjoining dwelling to the south (52 Francis Street). The shadow diagrams provided indicate that

these windows currently receive more than 2 hours of direct sunlight between midday and 3pm in midwinter, which will be reduced as a result of the proposal. Whether or not the area in question will retain 2 hours of direct sunlight has not been demonstrated as hourly shadow diagrams were not provided.

- The proposal will result in additional overshadowing of the private open space of the adjoining dwelling to the east (35 Herbert Street) at 3pm in midwinter. Whilst it does not appear to obstruct more than 1/3 of the direct sunlight currently available at this time, the level of impact cannot be qualified based on the information provided.
- The proposal will result in additional overshadowing of the private open space of the adjoining dwelling to the south-east (36 Arthur Street) at 3pm in midwinter. Whilst it does not appear to obstruct more than 1/3 of the direct sunlight currently available at this time, the level of impact cannot be qualified based on the information provided.

The additional overshadowing can be directly attributed to inconsistencies with built form controls of MDCP 2013 including minimum side setbacks (based on wall heights) and the prevailing/minimum rear building line. Furthermore, it is noted that the impacts and areas of non-compliance coincide with elements of the proposal that are somewhat excessive, including a minimum ceiling height (pitching point) of 3.1m on the southern elevation of the kitchen/dining room and a minimum ceiling height (pitching point) of 2.9m on the southern elevation associated with a void over the staircase and a bathroom. With this in mind, it cannot be said that the proposal provides equitable access to light and sunshine for adjoining properties, or that the proposal has been designed to maximise the penetration of sunlight to windows, living rooms and principal outdoor areas of adjoining properties.

Overall, Council cannot be satisfied of the extent of impact associated with the proposed development, or that the proposal is consistent with the requirements and objectives of this control. As such, the proposal is recommended for refusal in this regard.

3.4.2 Privacy and Security

The application proposes new and replacement elevated balconies, capable of providing opportunity to overlook adjoining dwellings. The areas of concern are addressed individually, as follows:

- **Rear upper floor balcony:**
A new balcony is proposed at the rear of the upper floor, to be sited at a distance of 6.5m from the rear boundary and 2.1m from both side boundaries. The rear upper floor balcony comprises a fixed screen on the southern side elevation and an operable screen along the eastern rear elevation, with no screen on the northern side elevation. Objections have been received in regards to the elevated balcony from the owners of the properties to either side. The incorporation of operable screens is not considered to provide appropriate privacy for the dwelling to the rear, particularly noting the non-compliant rear setback proposed and the lack of landscaping within the rear yard. Furthermore, the proposal is unresolved with regard to overlooking of the dwelling to the north. As such, the rear upper floor balcony is not supported.
- **Replacement ground floor front balcony:**
The application seeks consent for the demolition of the existing ground floor front balcony, to be replaced by a new larger balcony. Notably, the proposal does not seek to replace the existing privacy screen located along the southern side elevation of the balcony, despite the presence of windows of the adjoining dwelling directly adjacent to this area and the reduced setback now proposed. Whilst a condition could ordinarily be imposed to require fixed screening, a screen in this location will further exacerbate non-compliance with the side setback and may contribute to additional overshadowing. As such, the privacy implications of the proposed replacement balcony remain unresolved.

The unresolved privacy impacts associated with the rear upper floor balcony and the replacement ground floor front balcony are considered to warrant the refusal of the proposal.

It is noted that objections have also been received in regards to overlooking of the dwelling to the south from a window on the southern elevation of the upper floor adjacent to the stairwell and also the front upper floor balcony. However, privacy screens have been proposed over the window and along the full width of the balcony, such that unreasonable overlooking would be mitigated.

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

A minor portion of the northern side elevation of the proposed development extends above the maximum wall height prescribed by this control by up to 1.0m. The wall height non-compliance also occurs where the development is three storeys in height, inconsistent with the two storey height limit prescribed by this control. However, the areas of non-compliance are limited in length and do not detract from consistency with the objectives of the control, as follows:

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

Comment: The proposed development is maintained below the 8.5m maximum building height prescribed by clause 4.3 of MLEP 2013. The non-compliant portion of the development is setback from the street and will not be readily visible from the public domain.

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

Comment: The minor area of non-compliance is limited to a 1.7m wide portion of the northern elevation, and this part of the development does not attribute to excessive bulk or 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: The proposed development does not disrupt views to or from nearby private or public places.

- (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: Whilst the proposal as a whole overshadows adjoining properties to the south, east and south-east, the minor area of wall height non-compliance on the northern elevation of the dwelling does not contribute to this impact.

- (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: Not applicable - the site is not located within a recreation or environmental protection

zone.

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

Street setback

The application seeks to maintain the existing single garage that is sited forward of the 6m minimum front building line. Whilst the non-conforming structure is not a positive contribution to the streetscape, no works are proposed to the structure in this application.

The works proposed to the dwelling house and the new swimming pool are setback in accordance with the minimum front setback prescribed by this control.

Side setback

This control requires buildings to be setback from the side boundary at a distance of 1/3 of the respective wall height. The existing dwelling and the majority of the proposed additions are non-compliant with this control, as follows:

Room/Area	Side	Requirement	Existing	Proposed	Compliance
Front ground floor balcony	north	2.3m	2.1m	2.1m	No
	south	1.8m	2.1m	1.6m	No
Ground floor kitchen/living room	north	2.3m	1.0m	1.0m	No
	south	1.0m - 1.3m	0.8m	0.8m	No
Ground floor bedrooms	north	1.3m - 2.2m	1.0m	1.0m	No
	south	1.0m - 1.3m	1.0m	1.0m	No
Upper floor addition	north	1.9m - 2.7m	-	1.0m	No
	south	2.0m - 2.2m	-	0.8m - 1.0m	No
Upper floor front balcony	north	2.7m	-	2.2m	No
	south	2.1m	-	2.2m	Yes
Upper floor rear balcony	north	1.8m	-	2.2m	Yes
	south	1.8m	-	2.1m	Yes

Rear setback

Clause 4.1.4.4 of MDCP 2013 prescribes that development should have a minimum rear setback of 8m. The application seeks to retain the existing non-conforming setback of the ground floor (4.2m) at the ground floor. The upper floor rear balcony is setback 6.5m from the rear boundary, with the rear external wall of the proposed upper floor setback 8m.

However, clause 4.1.4.4 also prescribes that on sloping sites, such as the subject site, the rear setback should have regard likely impacts of overshadowing, overlooking and view loss. Further, that for the same reasons, the rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity of the site.

The siting of the existing dwelling is an anomaly in the streetscape, with generous front setbacks and a reduced rear setback. Upon review of the siting of other adjoining and nearby development, the established/prevaling rear building line dissects the site at a distance of approximately 12m from the rear boundary. With this in mind, both levels of the dwelling are sited within the rear setback, by up to 7.8m on the ground floor (existing) and 5.5m on the proposed upper floor.

The retention of the existing setbacks (both side and rear) on the ground floor is not an unreasonable

expectation in circumstances where the works are appropriately characterised as alterations and additions. Although the entire rear of the ground floor is to be rebuilt, any impacts associated with the ground floor structure relating to overshadowing and visual privacy are not made worse than that which currently exist.

However, the newly proposed upper level has been sited in a manner that is inconsistent with the 8m minimum setback, the prevailing rear building line and the minimum prescribed side setbacks. Whilst it is appreciated that the works have been designed to step up the slope of the site and that there are construction/economical benefits associated with maintaining setbacks of the lower level, the proposed upper level results in additional overshadowing of the adjoining dwelling to the south, at odds with the intent and objectives of both the side and rear setback controls.

Furthermore, it cannot be said that the proposal has been designed to minimise such impacts upon adjoining properties, noting that:

- the proposal incorporates 2.9m (minimum) ceiling height on the southern elevation of the upper floor (over the staircase void and bathroom), compared to 2.4m on the northern side of the upper floor (associated with bedrooms),
- the ceiling height of the ground floor living area and the roof over the balcony is increased to a minimum of 3.1m, and
- the roof over the new ground floor front balcony follows the alignment of the walls of the living room, despite the balcony being set in an additional 800mm.

In consideration of the extent of works proposed and the context of the site, a more skilful design could be developed to provide the same benefit to the owners of the property, without the level of impact currently proposed. It is acknowledged that the site is constrained by size/width and orientation, and that the northern windows of the dwelling to the south are vulnerable to overshadowing. However, as proposed, the resultant dwelling is not considered to be representative of a balanced approach to the development of the site, specifically with regard to the size and location of the upper floor and the associated impacts upon neighbouring properties.

As such, non-compliance with the side and rear setbacks prescribed by this control is considered to warrant the refusal of the subject application.

4.1.5 Open Space and Landscaping

The proposed development complies with the minimum total open space requirements of this control, but exceeds the maximum proportion of above ground open space and falls short of the minimum landscaped area calculation prescribed.

With a total of 68.5m² of above ground open space, the proposal exceeds the 53m² limit (25% of total open space) that applies to the site. The non-compliance is predominantly associated with the garden area above the garage, which is considered to be a positive contribution to the streetscape when compared to a roof form that would otherwise be in that location.

The proposal provides a landscaped area of approximately 39m², or 18% of total open space, inconsistent with the 35% minimum prescribed. It is noted that this figure differs from that of the applicant, which appears to have included areas that do not meet the minimum soil depth and width requirements. The works to the dwelling house are largely maintained within the existing footprint of the dwelling, with the non-compliance largely attributable to the proposed in-ground swimming pool.

Despite non-compliance with two numerical requirements, the landscaped area non-compliance does

not of itself detract from consistency with the objectives of this control, as follows:

- *To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

Comment: The additional hard surfaces proposed do not impact upon important landscape features or existing significant vegetation. The swimming pool is an in-ground structure, that will not be visible from the public domain.

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

Comment: The proposal, which maintains a landscaped treatment over the garage, is considered to reasonably maximise landscaped areas across the site. Whilst the soil depth is not sufficient to be included within the landscaped area calculation, the landscaped treatment over the garage provides a positive contribution to the streetscape. The additional hard surfaces have also been sited in a manner to ensure the safe retention of existing canopy trees on the subject site and the adjacent road reserve.

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

Comment: The above ground open space and landscaped area non-compliance's do not contribute to impacts upon the amenity of adjoining properties of the surrounding environment. Whilst separate concerns are raised in this regard, the issues would remain irrespective of amendments that could be undertaken to achieve strict compliance with this control.

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

Comment: Should the application be approved, conditions of consent can be imposed to ensure an appropriate stormwater management at the site.

- *To minimise the spread of weeds and the degradation of private and public open space.*

Comment: Should the application be approved, conditions of consent can be imposed to ensure the maintenance of the proposed landscaping, including weed management.

- *To maximise wildlife habitat and the potential for wildlife corridors.*

Comment: The proposal provides an appropriate contribution to wildlife habitat, commensurate with surrounding properties and the zoning of the land.

The proposed non-compliance with the prescribed above ground open space and landscape area calculations is not considered to warrant the refusal of the subject application.

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

The application proposes to retain the existing single garage, which results in non-compliance with the requirements of this control for 2 spaces to be provided in conjunction with a dwelling house. It is noted that the application initially proposed to alter the existing garage to provide for two spaces as required, however this led to other areas of non-compliance with controls that limit the width of parking structures

and the dominance of parking structures within the front setback.

In circumstances where the density of the development remains unchanged (the dwelling maintains 4 bedrooms and 1 study) and noting the limited width of the site, the retention of the existing non-compliant parking arrangement is not considered to warrant the refusal of the application.

4.1.7 First Floor and Roof Additions

Clause 4.1.7 requires first floor additions to complement the architectural style of the ground floor, and where possible, retain existing roof forms. The proposal is non-compliant with this requirement, in so far as the application proposes the demolition of all existing roof forms and alters the roof form and architectural style of the dwelling.

The proposal is also non-compliant with the provisions of this clause that prescribe that alterations and additions to a dwelling should not degrade the amenity of surrounding residences.

Non-compliance with this control is not considered to warrant the refusal of the application of its own right, but is a contributory factor to existing concerns relating to the size/siting of the proposed upper floor and associated overshadowing impacts.

4.4.2 Alterations and Additions

Clause 4.4.2 of MDCP 2013 prescribes that if alterations and additions involve demolition of more than half the building, then the development will be assessed as new work and the controls will apply to both existing and new parts of the resultant building. The control provides that the extent of demolition is calculated as a proportion of the existing external fabric being demolished. Noting that the proposal seeks to demolish all roof forms, approximately half of the ground floor external walls, all existing windows, both front balconies and a quarter of the lower floor enclosing walls, the proposal is considered to demolish more than half of the existing building.

However, this simply numeric approach is not endorsed by the NSW LEC, and the Demolition Planning Principle developed in *Coorey v Municipality of Hunters Hill* is the guiding document in this regard.

The planning principle firstly guides you to question why the characterisation of development is of relevance. In this instance, the extent of demolition is not insignificant, and the application is relying upon existing structures and the characterisation of 'alterations and additions' to justify the proposed retention and intensification of non-compliance with MDCP 2013.

The planning principle then provides a series of qualitative and quantitative questions, which are considered as follows:

- *How is the appearance of the existing building to be changed when viewed from public places?*

Comment: The application proposes to retain the existing garage, which is the dominant feature of the site as seen from the street. Whilst the front decks and roofs are to be rebuilt, the front facade of the dwelling remains generally the same in so far as the front facade of the development will comprise covered decks. The upper floor addition is setback from the front boundary, and will not be overly apparent from the street.

- *To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?*

Comment: The landscaped treatment across the site remains generally unchanged.

- *To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?*

Comment: The proposal does not impact upon a heritage item or a heritage conservation area.

- *What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?*

Comment: The proposed development seeks to retain the existing garage at the frontage of the site. There are no other detached outbuildings on the site.

- *What is the extent, if any, of any proposed change to the use of the building?*

Comment: There is no change of use proposed.

- *To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?*

Comment: The dwelling itself is setback from the street and will be generally screened from view. The proposed works to the pedestrian access arrangement will change the streetscape, however if these comparably minor aspects were the tipping point, they could be removed via condition.

- *To what extent, if any, are the existing access arrangements for the building proposed to be altered?*

Comment: Access arrangements remain generally unchanged in so far as the garage is to be retained and pedestrian access is gained via a path to the south of the garage.

- *To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?*

Comment: With the obvious exception of the new outlooks available from the upper level, the outlook from within the dwelling will remain unchanged.

- *Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?*

Comment: The majority of the demolition proposed does not have any material affect on the characteristics of the existing structure. The change to the roof form from a hip and gable roof to a skillion roof changes the architectural style of the dwelling, however the general form of the dwelling is otherwise retained.

- *To what extent is the site coverage proposed to be changed?*

Comment: With the exception of the proposed swimming pool, the site coverage remains generally the same as that which currently exists.

- *To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?*

Comment: The proposal seeks to intensify non-compliances relating to the rear building line (the

established building line) and side setbacks at both the ground floor and the newly proposed upper floor.

- *To what extent is the building envelope proposed to be changed?*

Comment: The envelope is to be increased as a result of the additional level and as a consequence of the increase to ceiling heights and the change to the roof form.

- *To what extent are boundary setbacks proposed to be changed?*

Comment: The boundary setbacks remain unchanged.

- *To what extent will the present numerical degree of landscaping on the site be changed?*

Comment: With the exception of the swimming pool, the works are generally maintained within the footprint of the existing dwelling.

- *To what extent will the existing floor space ratio be altered?*

Comment: The proposal results in an increase to the GFA of 62m², increasing the FSR calculation from 0.43:1 to 0.59:1. The majority of this floor space (52m²) is attributable to the proposed upper floor.

- *To what extent will there be changes in the roof form?*

Comment: The proposal seeks to demolish the existing hip and gable roof form, to be replaced by a series of skillion roof forms.

- *To what extent will there be alterations to car parking/garaging on the site and/or within the building?*

Comment: The application does not propose any changes to the garage.

- *To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?*

Comment: The application proposes a small volume of excavation in the south-east corner of the lower ground floor and at the street frontage.

- *What relationship does the proportion of the retained building bear to the proposed new development?*

Comment: The proposal will retain the majority of the existing external walls of the dwelling and the floor structure of both the lower and ground floors. The proposal will also retain garage in its current form. The proposal seeks to demolish all existing roof forms and all internal walls on the ground floor. It is considered that the proposal will retain more of the existing dwelling than that which is proposed to be demolished.

The proposal will result in considerable changes on the ground, however in this instance, enough of the existing building and secondary structures are to be retained such that the proposal is considered to be reasonably characterised as alterations and additions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$11,422 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,142,180.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- 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

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

RECOMMENDATION

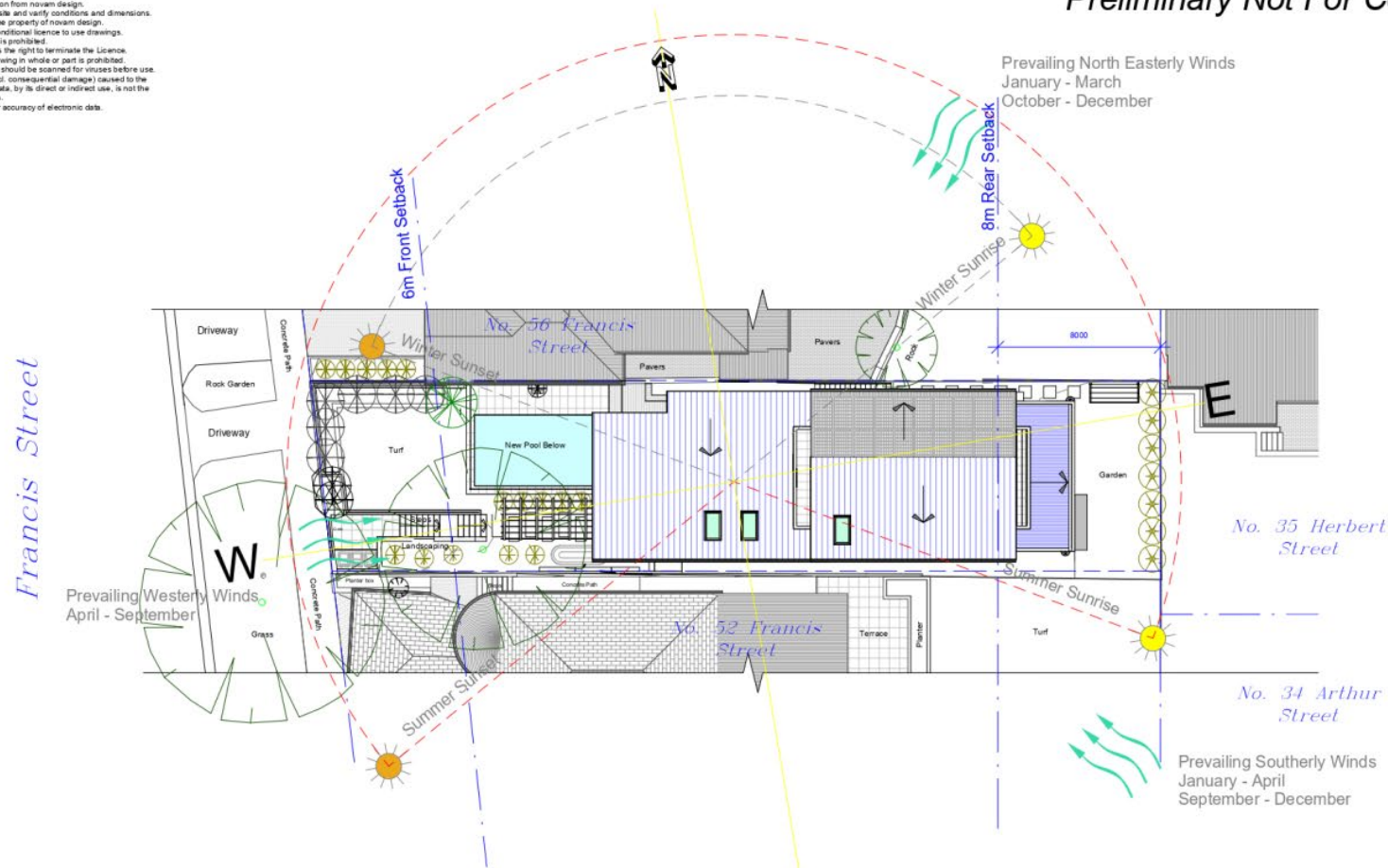
THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/1571 for the Alterations and additions to a dwelling house including a swimming pool on land at Lot 14 DP 4449,54 Francis Street, MANLY, for the reasons outlined as follows:

1. The works proposed within the front setback are antipathetic to the character of the streetscape and are inconsistent with the requirements and objectives of clause 3.1.1 (Streetscape (Residential Areas)) of Manly Development Control Plan 2013.
2. The application would result in unreasonable impacts upon the amenity of adjoining properties with regard to solar access, inconsistent with the requirements and objectives of clause 3.4.1 (Sunlight and Overshadowing) of Manly Development Control Plan 2013.
3. The application would result in unreasonable impacts upon the amenity of adjoining properties with regard to visual privacy, inconsistent with the requirements and objectives of clause 3.4.2 (Privacy and Security) of Manly Development Control Plan 2013.
4. The proposed development is non-compliant with the minimum side and rear setbacks prescribed by clause 4.1.4 (Setbacks (front, side and rear) and Building Separation) of Manly Development Control Plan 2013, resulting in unreasonable additional overshadowing of adjoining properties and inconsistency with the objectives of this control.

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1 Site Plan
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project No.
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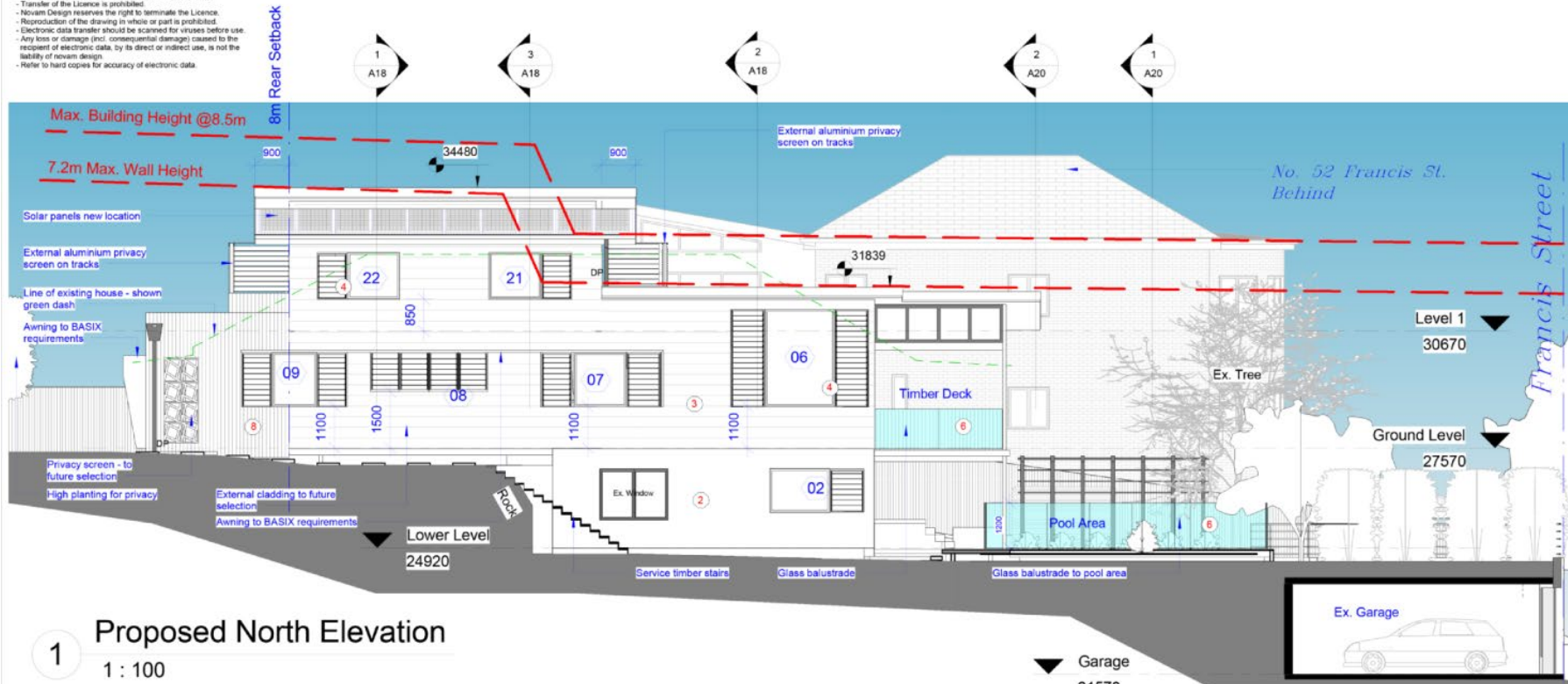
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54 Francis Street, Manly 2095

drawing
Site Plan & Analysis

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Proposed North Elevation

1 : 100



Wall Legend

- Denote Existing Wall
- Denote Demolition Work
- Denote New Wall
- Denote New Works

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NEW

project
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drawing
Proposed Elevations - Sheet 1

scale
1 : 100

date
26/02/2021

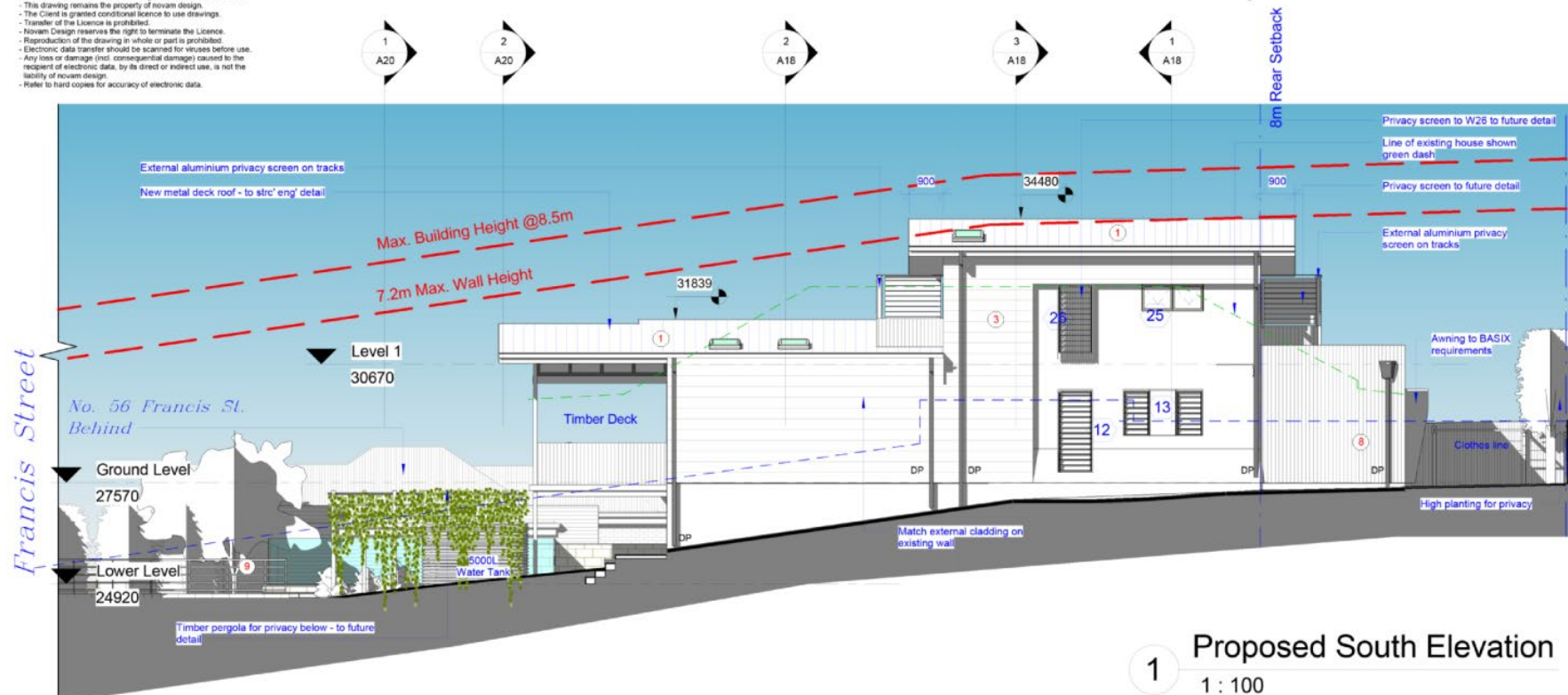
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1 Proposed South Elevation
1 : 100



Wall Legend

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- Denote Demolition Work
- Denote New Wall
- Denote New Works

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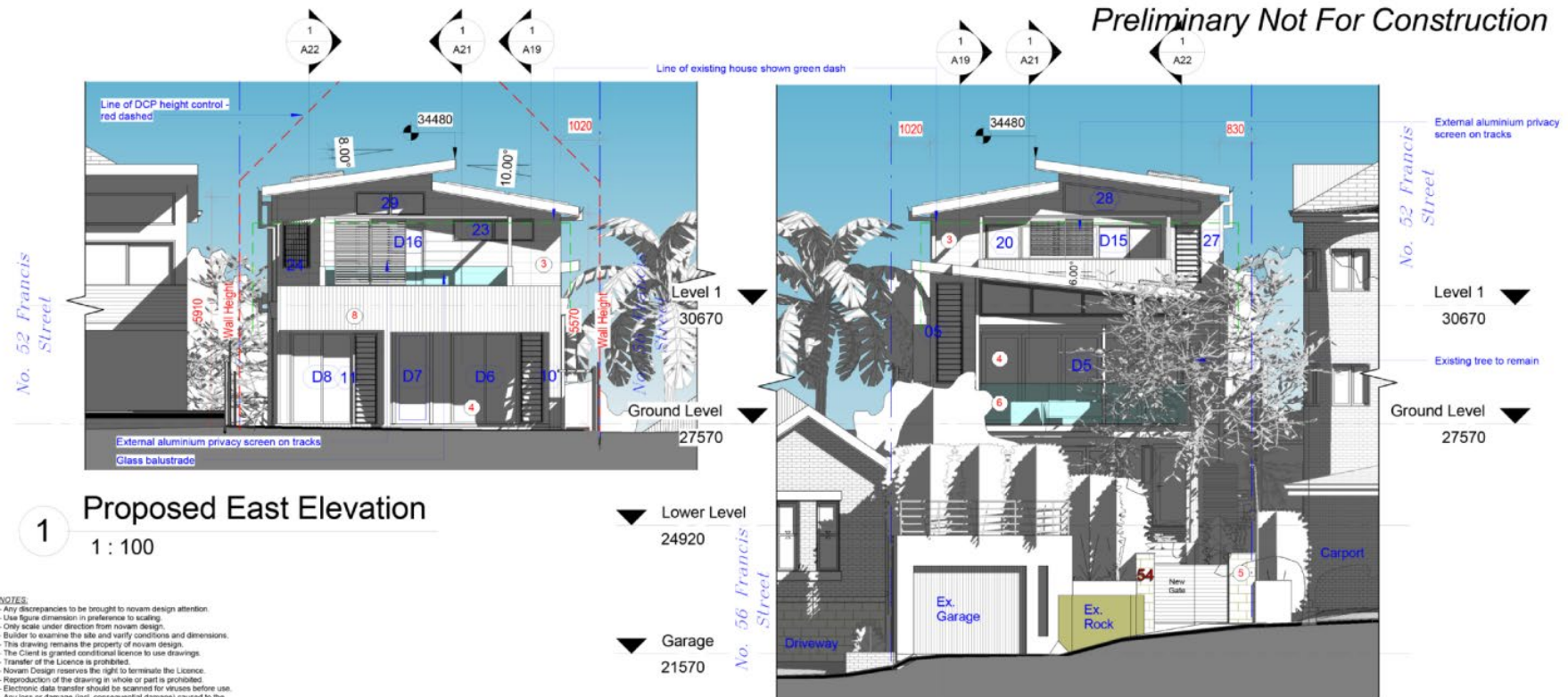
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project 54 Francis Street, Manly 2095
drawing Proposed Elevations - Sheet 2
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scale 1 : 100
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drawing no. A16
Revision A



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Wall Legend

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- Denote Demolition Work
- Denote New Wall
- Denote New Works

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project 54 Francis Street, Manly 2095

drawing Proposed Elevations - Sheet 3

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drawing no. A17

Revision A

ITEM 3.6	DA2020/1441 - 2B FRANCIS STREET, DEE WHY - ALTERATIONS AND ADDITIONS TO AN EXISTING COMMERCIAL BUILDING AND CHANGE OF USE TO A BOARDING HOUSE
REPORTING MANAGER	Lashta Haidari
TRIM FILE REF	2021/281294
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 DA2020/1441 for alterations and additions to an existing commercial building and change of use to a boarding house on land at Lot A DP 345183, 2B Francis Street, Dee Why, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1441
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot A DP 345183, 2 B Francis Street DEE WHY NSW 2099
Proposed Development:	Alterations and additions to an existing commercial building and change of use to a boarding house
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Owner:	CJH Investment Holdings Pty Ltd
Applicant:	Humel Architects Pty Ltd
Application Lodged:	17/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	27/11/2020 to 11/12/2020
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,949,090.00

EXECUTIVE SUMMARY

The application seeks consent for the change of use of the existing commercial building to a 21 room boarding house with 8 car parking spaces . Under the provisions of Warringah Local Environmental Plan 2011 (WLEP 2011), the subject site is within the R3 medium Density Residential zone and boarding house is permissible with consent.

As a direct result of the re-use of the building footprint of 100% site coverage and issues with the articulation and materiality, the proposal fails to respond to the landscape or built form character of the area and is therefore inconsistent with the provisions of the SEPP (Affordable Rental Housing) 2009. The proposal provides insufficient amenity for future residents with no external open space and issues raised with regards to solar access, cross ventilation and visual and acoustic privacy.

The proposal represents overdevelopment of the site and is inconsistent with the built form controls of the WDCP including front and side setbacks, building envelope and landscape open space. The parking and access arrangement is not compliant with the required standards and raises issues with regards to road safety.

The application was referred to the Design Advisory and Sustainability Panel (DSAP) who concurred with Council's assessment of the proposal.

The public exhibition of the application resulted in nine (9) submissions, which raised concerns with the density of the development, traffic and parking, amenity impacts in terms of impacts on visual and acoustic privacy, security and safety issues and substandard accommodation being provided. The issues raised in the submissions have been addressed in the "Public Notification" section of this report

On balance, the assessment of the proposed development on this site against the applicable planning controls and related legislation reveals that there are significant breaches with the controls. The application is not in the public interest and is therefore recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application proposes alterations and an additional floor to the existing commercial building and a change of use to a 21-bedroom boarding house, including a manager's room and the retention of 8 car parking spaces with access via Redman Road. In detail, the proposal comprises:

Demolition

- Demolition of internal walls, bathrooms and external glazing. The existing internal stair is retained.

Ground level

- Car park area - Retention of 8 car parking spaces, 5 motor bike parking spaces, bicycle parking access via Redman Road. In addition, a garbage room and bulk waste storage room.
- 23sqm common room with adjoining 20sqm internal area referenced as "private open space" with full height louvers to Francis Street frontage.
- 2 boarding rooms with kitchen, laundry and bathrooms with planter boxes and metal screen to Francis Street frontage.
- Disable WC.
- Ramped entrance via Redman Road, entrance lobby and stair access.

First Floor

- 12 boarding rooms with kitchen, laundry and bathrooms including a managers room with a courtyard. Rooms 11 and 12 also have a courtyard.
- New windows to Redman and Francis Street frontage and fire rated glass blocks to the north elevation.

Second Floor (new addition)

- 7 boarding rooms with kitchen, laundry and bathrooms.

Roof

- 18 KW solar panels and 5 roof lights.

External

- Entrance signage displaying the word Hub.
- Materials: Perforated metal privacy screens, stone and metal cladding and rendered painted brickwork.
- Planting: planter bed to ground floor Francis Street frontage and street trees.

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

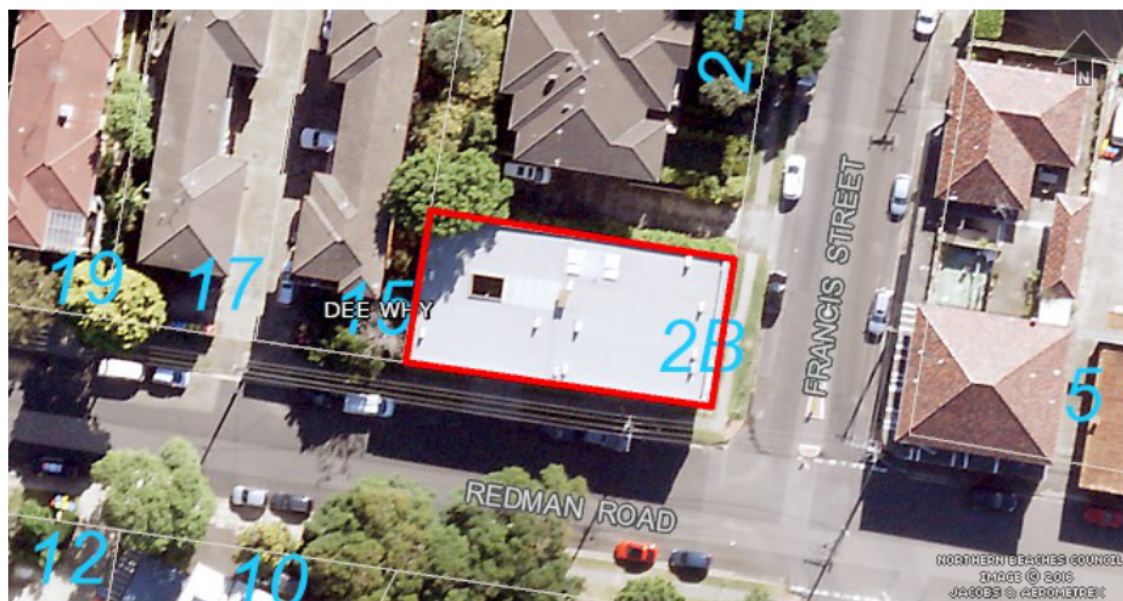
Warringah Local Environmental Plan 2011 - Zone R3 Medium Density Residential
Warringah Development Control Plan - A.5 Objectives
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C9 Waste Management
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - D10 Building Colours and Materials
Warringah Development Control Plan - D14 Site Facilities
Warringah Development Control Plan - D20 Safety and Security
Warringah Development Control Plan - D22 Conservation of Energy and Water

SITE DESCRIPTION

Property Description:	Lot A DP 345183 , 2 B Francis Street DEE WHY NSW 2099
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-west intersection of Frances Street and Redman Road.</p> <p>The site is regular in shape with a frontage of 30.6m along Redman Road and a 15.2m frontage to Frances Street. The site has a surveyed area of 469m².</p> <p>The site is located within the R3 Medium Density Residential zone from WLEP 2011 and accommodates a two-storey commercial office building which is built to the boundaries and provides an at grade car park for 12 vehicles accessed via Redman Road.</p> <p>The site is generally flat and has no landscape features.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining development is characterised by brick four storey residential flat buildings to the immediate north and west and south-west set back from the street frontage in landscape setting. A public car park and public play park to the south. A childcare centre adjoins the park to the south-west. To the east are a mixture of two storey commercial and retail premises associated with Dee Why business intersperse with residential apartment on the upper floors.</p>

Map:



SITE HISTORY

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

Pre-lodgement Meeting (PLM)

A pre-lodgement meeting (PLM2020/0214) was held on the 17 September 2020 in relation to the development of this site as a boarding house. The proposal sought internal alterations construction of an additional floor and the conversion of the commercial office building into a 21-bedroom boarding house, including manager's accommodation with 9 car parking spaces.

The design as proposed at the PLM was not supported as it raised issues with the following:

- Landscape Open space- the reliance on street planting in the public domain is not supported.
- Common Open Space is not supported as it is fully enclosed and located adjacent to garbage room.
- Character of the area - the building retains its commercial presentation and needs further design resolution to reflect the residential use and character of R3 Residential zone and improve the street address.
- Building envelope – the top floor needs to be set back to comply with envelope control.
- Cross ventilation –can be improved with a central courtyard suggestion.
- The car park layout is non-compliant and there is a shortfall of 2 car parking spaces.
- Potential environmental issues issue relating to noise from A/C units. An acoustic report and Plan of Management are required to consider these issues.
- Other technical issues that require further consideration includes flooding and accessibility.

With the exception of the following changes the design is generally the same as that presented in the PLM drawings:

- Relocation of the garbage room to the car park and consequential loss of one parking space.

- Modification of the elevational treatment into segments using colour and materials.
- Slight re-configuration of two units on level 1 to increase the size of the “courtyards”.

Class 1 Appeal

On 13 January 2021, the applicant filed a Class 1 Appeal to the Land and Environment Court against deemed refusal of DA2020/1441 (the subject application).

Design Review Panel

On 25 February 2021, the Panel peer reviewed the application and concurred with the assessment of Council Officers. The Panel raised issues with the unacceptable level of baseline amenity for future residents, the non-compliance with a number of controls, the lack of articulation and treatment of the facade to present a residential typology, the lack of any external open space or landscape treatment and insufficient consideration of sustainability.

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 as a commercial office for an extended period of time. Subject to conditions relating to hazardous building materials it is considered that the site and the subject development is unlikely to pose a 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.
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>

Section 4.15 Matters for Consideration'	Comments
	<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. Should consent be granted 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). Should consent be granted 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. Should consent be granted 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). Should consent be granted 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 Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
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 Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Affordable Housing SEPP, the WLEP and WDCP. The proposal 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 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 9 submission/s from:

Name:	Address:
Mr Sedboro David Mayne	3 Cook Road WENTWORTH FALLS NSW 2782
Cheryl Gai Rine	6 Duchess Court BONNY HILLS NSW 2445
Mr Robert Francis Faulkner	4 / 3 Francis Street DEE WHY NSW 2099
Mrs Yvette Burbage	10 Redman Road DEE WHY NSW 2099
Ms Kerry Michelle Morris	1 Prescott Avenue NARRAWEENA NSW 2099
Ms Susan Lee Gillies	23 / 21 Redman Road DEE WHY NSW 2099
Yvonne Marie Mayne	3 Cook Road WENTWORTH FALLS NSW 2782
Ms Elke Maree Joris	9 Parkes Road COLLAROY NSW 2097
Ms Yanzhen Yu	1 Landy Place BEACON HILL NSW 2100

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

- Traffic, road safety and parking;
- Insufficient external space;
- Overcrowding / overdevelopment;
- Visual and acoustic privacy issues;
- Safety and security;
- Inappropriate use of building;
- Concern about intended future use, and
- Devalue property.

The matters raised within the submissions are addressed as follows:

- **Insufficient car parking and traffic safety issues with the increase in the vehicles in the area.**

Comment:

Agreed, there are issues with the design and allocation of parking which raises road safety issues. Refer to comments from Council's Traffic Engineer.

- **Insufficient outdoor common area.**

Comment:

Agreed, the applicants relies on an internal area located at ground level to meet the SEPP (AHR) provision which is not acceptable.

- **Overcrowding / low quality living standards / poor internal and external amenity for residents. Too many rooms are proposed, and the accommodation is cramped. Substandard accommodation has potential to cause health issues for residents, including mental health issues.**

Comment:

Agreed, the proposal does not provide sufficient internal and external amenity for the future residents and raises issues with regards to solar access, cross ventilation, external open space and privacy. Substandard accommodation could be linked to health issues. The development retains a building which is built to the boundaries and breaches numerous built form controls, the proposal represents overdevelopment of the site.

- **Increase noise disturbance to neighbouring uses.**

Comment:

Council's Health Unit have not raised any issues with regards to acoustic impacts to neighbouring properties.

- **Safety and security issues to neighbours including the elderly and children associated with the use as a boarding house.**

Comment:

There is no evidence to suggest that the proposal represents a safety and security issue to neighbours.

- **A boarding house is not an appropriate use of a commercial building.**

Comment:

Boarding houses are permissible within the R3 Medium Density Residential zone and the reuse of the building is supported in principle. However, the design of the proposal raises issues with standard of accommodation for the future residents and the design is out of character with the surrounding area.

- **Visual privacy issues with rooms, including common area overlooking residential properties to the north (including kitchen and living room windows) and a childcare centre.**

Comment:

Windows are located within the northern elevation which are positioned 2.9m from the boundary and have the potential to overlook windows and balconies to the residential flat building to the immediate north.

- **The rooms all have private kitchens and bathrooms which breaches the NSW Fair Trading definition of a boarding house where residents share these facilities. The DA could be assessed as studio apartments. Concern is expressed over the potential future plan to change the development to a strata RFB.**

Comment:

The SEEP (ARH) allows for rooms to have private kitchens and bathrooms.

- **Negative impact on property value.**

Comment:

Impact on property value is not a material planning consideration.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported (Subject to conditions)</p> <p>Proposal is capable of compliance with the National Construction Code via an 'Alternate Solution' or DTS provisions and is therefore acceptable with condition/s.</p>
Environmental Health (Contaminated Lands)	<p>Supported (Subject to conditions)</p> <p>Application is for the change of use of the existing office premises to a 20 room boarding house plus managers residence.</p> <p>The SEE advises the following regarding contaminated land:</p> <p><i>The site has been used as a commercial office building for a number of years and it is considered unlikely that the site will require remediation works. Additionally, the site is not identified as being on the list of NSW contaminated sites that have been notified by the NSW Environment Protection Authority (EPA) and has not been identified by Northern Beaches Council as an area for potential contamination.</i></p> <p><i>A site investigation report is not required to be submitted as part of the development application. A Geotechnical Report has been prepared</i></p>

Internal Referral Body	Comments
	<p><i>by Geotechnical Consultants Australia. During their investigation there was no identification of any contaminates that would require further investigation.</i></p> <p>From a review of the SEE and plans there appears that there will be little below ground works. The application however involves the change of use of an existing commercial office premises to residential and there could be potential concerns with hazardous building materials (asbestos, lead, SMF, PCBs) that may have been used in the building. A hazardous building materials survey of the premises (asbestos, lead, SMF, PCBs) by suitably qualified and experienced persons will be required to ensure that the premises is safe with respect to hazardous materials during demolition and building works and prior to occupation.</p>
Environmental Health (Industrial)	<p>Supported (Subject to conditions)</p> <p>Application is for the change of use of the existing office premises to a 20 room boarding house plus managers residence.</p> <p>Boarding House Facilities & Accommodation</p> <p>Each of the 20 rooms will be self-contained with a private kitchen, bathroom and laundry. The facility also provides communal common areas. Based on the information provided in the SEE the proposed application appears adequate in regards to room sizes and the facilities provided.</p> <p>Noise</p> <p>A common concern with boarding houses is noise impacts including:</p> <ul style="list-style-type: none"> • Social noise from lodgers including noise from the communal areas; and • Noise from any plant from the building. <p>A Plan of Management for the Boarding House was provided that includes a number of noise and amenity control measures. The Plan of Management however, will need to be updated to ensure that Northern Beaches Council is notified of any changes to the contact details of the onsite manger and the offsite managing agent.</p> <p>The applicant has provided an acoustic assessment by Acoustic Logic Consultancy Pty Ltd Dated 2 September 2020 (Reference 20200641.1/0209A/R0/AS) assessing the potential noise impacts associated with the installation of air conditioning units. The assessment advises the following:</p> <p><i>Calculations indicate that satisfactory noise levels will be achievable for the AC units as long as the recommendations/control measures outlined below in section 5.2.2 are adopted.</i></p> <p>5.2.2 Recommendations/Control Measures</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • <i>Selected air conditioning unit operation noise should not exceed 62dB(A) sound power level (SWL)</i> • <i>Air-conditioning units are to be run on night mode within the night time period.</i>
Landscape Officer	<p>Refusal</p> <p>The proposal is for the change of use of an existing office premises to a boarding house.</p> <p>The application is assessed by Landscape Referral against State Environmental Planning Policy (Affordable Rental Housing) 2009, Division 3 Boarding Houses, and in particular clause 29 - Standards that cannot be used to refuse consent (2) (b) landscaped area, and Warringah Development Control Plan 2011, including but not limited to the following clauses:</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation <p>The existing site is occupied by commercial offices to the full extent of the site area and is Land zoned R3 Medium Density Residential. Adjoining R3 lots within Francis Street and Redman Road contain residential unit development that exhibit front setbacks with landscaped area occupied by trees and other vegetation.</p> <p>On review of the proposal, consideration is given to the SEPP (ARH) clause 29 - Standards that cannot be used to refuse consent (2) (b) landscaped area, which states that refusal does not apply "if the landscape treatment of the front setback is compatible with the streetscape in which the building is located". The proposal within the site contains a continuous planter approximately 800mm in width across a portion of the Francis Street frontage that is capable of supporting low shrub planting, and a small garden bed approximately 1.2m x 1.0m located at the corner of Francis Street and Redman Road, capable of supporting an accent plant or other low height vegetation. Street tree planting is proposed along Francis Street and Redman Road and no issues are raised with this component.</p> <p>With the retention of the existing building footprint, the landscape proposal within the site fails to provide adequate landscape treatment under the SEPP (ARH) clause 29 intent, as well as under DCP clause D1, where the landscape proposal within the site is not compatible with the landscape treatment of front setbacks of adjoining residential unit developments in both Francis Street and Redman Road. The adjoining residential unit development front setback areas typically contain tree planting and other vegetation to soften the built form, and this is not achieved by the proposed development.</p>
NECC (Development Engineering)	The proposed development does not require OSD and connection to the existing system is satisfactory. The proposed parking layout is to

Internal Referral Body	Comments
	<p>be assessed by Council's Traffic Engineers. The existing driveway crossing and footpath are not to Council's specification and will need to be reconstructed. The distance of the development to the nearest public transport meets the objectives of the SEPP.</p> <p>No objection to approval, subject to conditions as recommended.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Supported (Subject to conditions)</p> <p>The proposed development is for the alterations and additions and change of use of an existing office premises to a boarding house. Much of the ground floor structure is being retained including garaging and car spaces which do therefore not require retrospective protection from the 1% AEP event. The existing ground floor component is located above the relevant Flood Planning Level of 24.21m AHD. Conditions are included to manage any residual flood risk and the risk to life of the development.</p>
Strategic and Place Planning (Urban Design)	<p>Refusal</p> <p>SEPP ARH 2009 C1.30A: Character of Local Area <i>A consent authority must not consent to development to which this division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</i></p> <p><i>Applicant response</i> <i>Complies. The proposed boarding house is essentially an internal fit out of an existing building with an additional second storey provided. The development will use the existing building envelope, and the second- floor addition has been set back from the building edge and will not contribute to excessive bulk and scale. The proposed development will not contribute to any additional overshadowing, privacy or amenity impacts for neighbouring properties.</i> <i>The existing building has been in use for a substantial period of time and is considered to be compatible with the development in the immediate area and the wider community. The site is located on the edge of the R3 zone, adjacent to the B4 zone that primarily consists of commercial development at ground floor. The premises is unique in that despite it once being a commercial building, it will appear as a residential building through strategic architectural design. The development is in keeping with the character of the area of medium density residential flat buildings, 1-2 storey commercial buildings and other surrounding land uses.</i></p> <p>Compatibility as referred to in the applicants Statement of Environmental Effects seems to refer to the commercial adjacency and through 'strategic architectural design' 'will appear as a residential building'.</p> <p>WLEP 2011 R3 Medium Density Zone objectives <ul style="list-style-type: none"> • To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces. </p>

Internal Referral Body	Comments
	<p>The design response in this location should represent a well considered design the represents good urban design outcomes between the public and private interfaces of this location, in the context of the Dee Why Town Centre adjacency and residential zone surrounding the development.</p> <p>The design represented in the drawings submitted requires further design and detailed consideration, as discussed in this response, and design testing to further articulate the residential typology rather than merely 'segmenting' the facade through colour application and decoration.</p> <p>The rearranged floor plan at ground level better resolves some initial amenity issues however further to a discussion on the Communal open space and privacy issues discussed herein are elements of material finishes/facade elements that require further refinement. It is recommended the glazed balustrade to the entry be re-considered materiality to provide a modicum of privacy to the entry for users. The glazed balustrade is more suited to a commercial building typology and the testing of alternate materials that respond better to the somewhat harsh street context is recommended.</p> <p>As such development that is in keeping with the character of the R3 residential area, the context of which this building will become part of, should represent a better articulated typological response to the residential area. Currently the building still reads as a commercial building.</p> <p>Street Address/Site Context</p> <p>Concern is raised regarding the treatment of the "external outdoor area" which shows a full height glazed louvre treatment to this prominent corner.</p> <p>A balance between surveillance, CPTED principles, and privacy and amenity for the internal residents using this space requires further testing of design response. The room at this point is elevated above street level and thus presents both opportunities and constraints.</p> <p>The site being on this corner intersection is also highly trafficked by both vehicles and pedestrians and adjoins a relatively active public plaza mediating the connection between the site and Pittwater Road.</p> <p>Solar Access</p> <p>It is noted in the planning report that the common area is located in the north east and thus complies. The planning report requires amendment to correctly locate the common room and shadow diagrams to evidence that the solar access requirement is compliant with the current plans showing the common room has moved from the north east to the south east.</p> <p>Sustainability</p> <p>The proposed change of use from commercial premises to boarding house is in principle supported. Equally, the re-use of the existing building structural fabric represents a sustainable approach to the development. This said, it was raised in the pre-lodgement meeting how the change of use is actually reflected in the built form so as to represent the changed use; the typology of a multi-residential</p>

Internal Referral Body	Comments
	<p>building/boarding house.</p> <p>The breaking up of the facade by different 'segments' does not address the overall representation of that as a multi-residential property. The full length of large glazed areas still reminiscent of a commercial building with rooms fitted to existing structural elements retained and very little additional detail to the window suites through the use of reveals or residential type glazed window suites. The retention of the full glazed commercial suites still reads as a commercial building. This seems also evident to the ground floor accessible rooms where full height glazed commercial suites sit behind a perforated screen (with no dimensioning to demonstrate the outcomes of this strategy through wall section profiles). It would seem, as demonstrated in the drawings, that these elements are merely a decorative item to provide partial privacy to these ground level residences, albeit with floor levels raised above the external public pedestrian paths.</p> <p>Landscape Area</p> <p>Pre-lodgement discussions sought to engage with the applicant to consider the opportunity to open up the northern elevation to create a ground level green landscape space with void to the sky to seek to address the lack of landscape opportunity on the site. The non compliance with SEPP ARH landscape treatment to the front setback was also acknowledged in terms of the sustainable response to retention of the front facade and is acknowledged with reference to the above comments.</p> <p>Private Open Space</p> <p>Whilst the applicant notes compliance with the requirements of SEPP ARH for private open space, the configuration and treatment to this area at the front of the building, by virtue of a full height glazed operable louvre, does not strictly speaking, constitute a private open space. Additionally there would be concerns for the privacy and security of this area being such an exposed area to the corner of the site, as discussed elsewhere herein. Testing of alternate design responses that can address the privacy issue whilst also allowing for a modicum of 'private open space' is highly recommended.</p> <p>Access Report</p> <p>It is noted that there is no requirement for cross ventilation to boarding houses. The proposed rooms that do not address solar or cross ventilation for amenity is a poor design outcome. Cross ventilation will be difficult to achieve for the majority of the rooms and whilst this is strictly a requirement under the SEPP ARH it should be a consideration. With the development seeking to maximise the number of rooms across the building discussions that sought to encourage the applicant to apply a more rigorous design approach to the development have not been demonstrated in the current design of the upper level boarding rooms.</p> <p>Waste Room Relocation</p> <p>The new location of the waste room is supported as it represents a</p>

Internal Referral Body	Comments
	<p>better outcome in terms of urban streetscape design and building response.</p> <p>General Amenity There are various responses throughout the documentation and supplementary reports that respond to the need not for certain aspects of amenity, compliance and design response. The meeting of minimal baseline design requirements for any residential buildings, the lack of adequate baseline amenity for occupants is an ongoing discussion which Northern Beaches Council is seeking to address through the Design + Sustainability Advisory Panel.</p> <p>As such Urban Design comments seek not to support (or not) the proposed development but suggest the NBC Design + Sustainability Panel may be a relevant forum to seek independent expert advice on the design and sustainability aspects of the development.</p>
Traffic Engineer	<p>Refusal The proposal has been assessed and the proposed car park layout does not comply with the requirements of AS2890.1 due to the lack of clearances on the spaces adjoining the boundary walls.</p> <p>The visibility at the exit to the car park presents a significant pedestrian hazard and does not meet requirements of the standard. The turning path information does not demonstrate that all parking spaces within the development are able to be used by the B85 design vehicle and may result in vehicles having to reverse from the site into Redman Road.</p> <p>There are significant access and safety issues to be addressed by the applicant that cannot be addressed through the application of conditions and as such the application is not supported at this time.</p>
Waste Officer	<p>Refusal</p> <p>There are several non-compliances with this proposal. All are easily solved.</p> <p>1) Waste Bin Storage Room</p> <ul style="list-style-type: none"> The bin room is not large enough to contain the required number of bins. The access door to the bin room swings inwards. <p>Council's design guidelines require that bin room doors must swing outwards and be able to be latched in the open position. Changing the door to swing outwards would resolve both of the above non-compliances.</p> <p>2) Bulky Goods Storage Room</p> <ul style="list-style-type: none"> The access door to the bin room swings inwards.

Internal Referral Body	Comments
	Council's design guidelines require that bulky goods room doors must swing outwards and away from the path of travel.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	No response received The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.

Council's Health Officer has reviewed the proposal and notes that as the site has been used as a commercial office building for a number of years with no record of any prior use it is considered unlikely that the site will require remediation works. Additionally, the site is not identified as being on the list of NSW contaminated sites that have been notified by the NSW Environment Protection Authority (EPA) and has not been identified by Northern Beaches Council as an area for potential contamination.

A site investigation report is not required to be submitted as part of the development application. A Geotechnical Report has been prepared by Geotechnical Consultants Australia. During their investigation there was no identification of any contaminants that would require further investigation.

From a review of the SEE and plans there appears that there will be little below ground works. The application however involves the change of use of an existing commercial office premises to residential and there could be potential concerns with hazardous building materials (asbestos, lead, SMF, PCBs) that may have been used in the building. A hazardous building materials survey of the premises (asbestos, lead, SMF, PCBs) by suitably qualified and experienced persons will be required to ensure that the premises is safe with respect to hazardous materials during demolition and building works and prior to occupation.

In summary, subject to conditions relating to hazardous building materials it is considered that the site

and the subject development will minimal excavation is unlikely to poses a 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 (g) Zone B4 Mixed Use.	Consistent The site is located within the R3 Medium Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.

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
(2) Despite subclause (1), this Division does not	Consistent

<p>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>The site is located within the R3 Medium Density 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>

Clause 28: Development may be carried out with consent

Requirement	Comment
<p>Development to which this Division applies may be carried out with consent.</p>	<p>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.</p>

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
<p>(1) Density and scale A consent authority must not refuse consent to development to which this Division applies on 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:</p>	<p>(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or</p>	<p>Floor space ratios are not applied in WLEP 2011 or WDCP</p>	<p>Not applicable</p>
	<p>(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</p>	<p>Floor space ratios are not applied in WLEP 2011 or WDCP</p>	<p>Not applicable</p>

	on the land, or		
	(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.	R3 Medium Density Residential zone	Not applicable
(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,	Permissible height 11m Proposed height 9.7m	Compliant
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The proposal retains the existing footprint that occupies 100% of the site with no external landscaping. The proposal is not characteristic or compatible with the surrounding landscape character	Inconsistent
(c) solar access	where the development	The communal living	Inconsistent

	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,	room provided within the south-east corner at ground level is a fully enclosed internal extension within the existing built fabric and does not provide adequate solar access.	
(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 adjacent to that accommodation,</p>	<p>The private open space is located within the south-east corner at ground level and is a fully enclosed internal extension within the existing built fabric and not open to the sky.</p> <p>Likewise, the private open space provided for the site manager at level 1 is a fully enclosed internal extension within the existing built fabric with glass block windows to the north and open to the sky.</p> <p>The private open space is not deemed sufficient.</p>	Inconsistent
(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</p>	The proposed car parking layout is not compliant with the relevant Australia standards. Refer to comments from Transport.	Inconsistent

	<p>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>		
(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 used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	The gross floor area of each room is compliant.	Compliant
	<p>(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.</p>	Private kitchens and bathroom facilities are provided to each boarding room	Compliant
	<p>(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).</p>	Not relevant	Not relevant

Clause 30: Standards for boarding houses

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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,	21 rooms are proposed with an internal communal living room	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 ,	Rooms are less than 25sqm	Compliant
(c) no boarding room will be occupied by more than 2 adult lodgers,	Can comply by way of a condition	Can Comply
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Each boarding room has a private kitchen and bathroom	Consistent
(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,	A managers room is provided at level 1	Consistent
(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,	The site is zoned R3 Residential.	Not relevant
(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.	Can comply by way of a condition	Compliant
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	N/A	N/A

Clause 30AA: Boarding houses in Zone R2 Low Density Residential

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Comment:

The site is located with a R3 Medium density zone therefore this clause does not apply.

Clause 30A: 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 surrounding area is characterised primarily by three and four storey brick residential flat buildings to the immediate north, west and south which are set back from the street frontage. The majority of the existing buildings are older apartment blocks dating from the 1960s, 1970s and 1980s. There is consistent theme of the brick buildings being set back from the street frontages some with extensive landscaping including canopy trees. The roof design of the older stock comprises hipped tiled roofs whereas the more recent development have flat metal roof.

An example of a more recent three (3) storey residential flat buildings at 18 Redmans Road to the south-west maintains this landscaped setback and materiality with a combination of brick and timber cladding to the facade. No 10, 12 and 14 Redman Road differ in materiality to the typical brick residential building. No 14 is a three storey rendered building, No. 12 is a two storey pitched roofed rendered building and No 10 a two storey pitched roof rendered building currently in use as childcare centre. All properties are set back from the street with some landscape buffer.

The area to the east and south-east primarily comprises two storey brick commercial / retail premises with a mixture of tiled hipped roofs and metal flat roofs. These properties are built to the street boundaries with no landscape set back consistent with the character of other development within the Dee Why Commercial centre (B4 Mixed Use zone) .

The retention of the existing commercial building to take advantage of its nil setbacks and nil landscaping but changing its use to residential does not strike the right balance in planning a significant re-development of the site. There is no setback of the subject building to either the primary or secondary frontage or to the side. The character of both Francis Street and Redman Road is that of residential flat buildings setback at least 6m from the frontage.

In this regard, the scale of the proposal is incompatible with the streetscape and inconsistent with the desired outcomes for the site.

- *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 noted above, as a direct result of the re-use of the building footprint of 100% site coverage the proposal results in an intensification of the site within the existing building footprint and is therefore considered to be overdevelopment.

The lack of high quality architectural response to articulation, materials and fenestration treatments to appropriately breaks up the mass of the building or address the change of use and adaptive re-use of a commercial building to that of a residential typology will result in a building that is uncharacteristic of its predominant use and the neighbouring and adjacent contexts. The building retains a commercial 'curtain wall' appearance that is out of context and character to the adjoining residential buildings. In addition, there is no landscaping to soften the built form and ensure the consistency of the existing street pattern.

In this regard, the development is considered to be incompatible with the scale of surrounding development and inconsistent 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:

There are no existing site characteristics / landscaping that will assist in reducing the visual dominance of the development and no planting proposed around the site edges to soften the visual impact of the building.

In this regard, it is considered that no effective methods have been employed in the design of the development to reduce its visual dominance and is inconsistent 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:

There is a consistency of architectural styles of residential flat buildings comprising face brick facades and tiled roofs set back from the street frontages in landscape settings of varying quality. More recent developments takes clues from the existing streetscape using a combination of brick and timber panels. Conversely, the materials proposed in the subject development include metal cladding which is more consistent with a commercial typology. The use of materials does not therefore reflect the materials of buildings in the street.

In this regard, the development is considered to be inconsistent 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 development will have limited impacts on neighbouring amenity in terms of overshadowing and noise. However, the proposed new windows to the upper floor habitable rooms on the northern elevation (level 2) will have the potential to overlook windows and areas of private open space to the residential flat building to the immediate north being sited 2.9m from the boundary.

Privacy

The proposal includes new habitable windows in the north elevation that are sited 2.9m from the boundary. These window will have the potential to overlook the windows and privacy balconies of the apartments in the RFB to the immediate north.

Overshadowing

Shadow diagrams confirm that the additional shadow resulting from the proposed upper floor roof will cast additional shadow primarily on the public road and footpath. It will not result in unreasonable impacts on neighbouring amenity.

Noise

Given that all areas of private open space and common open space are internal it is not expected that the development will result in unreasonable impacts on neighbouring amenity by virtue of acoustic privacy impacts.

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 incompatible with the character of the local area and surrounding wider locality.

This matter warrants the refusal of the Development Application.

Conclusion

The proposed development is not supported.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1120361M dated 13 August 2020)

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Concession target pass
Energy	50	45

While DSAP are supportive of the adaptive re-use of the building and its sustainability benefits. They raised the following issues with the proposal:

- The dog-legged corridor space is completely internal. There is no fresh air or natural light in the corridor. It could be significantly improved with the corridor ends being recessed from the boundaries and glazed to introduce natural light and ventilation.
- Courtyards risk becoming hot boxes in summer which will mean they are not used and will impact on thermal comfort in the unit, so the door will be closed, the A/C switch on and no fresh air will come into the apartment

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.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	9.7m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.3 Flood planning	Yes

Detailed Assessment

Zone R3 Medium Density Residential

The proposed development is inconsistent with the following objectives of Zone R3 Medium Density Residential of the Warringah Local Environmental Plan 2011. Objective 4 which requires low density residential environments to be characterised by landscaped settings that are in harmony with the natural environment of Warringah. Objective 5 which requires medium density residential environments are of a high visual quality in their presentation to public streets and spaces.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	2 / 3	3	N/A	Yes
B3 Side Boundary Envelope	North elevation 5m West elevation 5m	Breach of the existing first floor (1.9m in height x 2.1m in length) and the new addition (3m - 0m in height for a length of 26.1m) Breach of the existing first floor (1.92m in height x 1m in length) and the new addition (2.2m - 0.5m in height for a length of 26.1m)	Refer to details	No
B5 Side Boundary Setbacks	4.5m	Nil	100%	No
	4.5m	Nil	100%	No
B7 Front Boundary Setbacks	primary 6.5m	Nil	100%	No
	secondary 3.5m	Nil	100%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	Nil	100%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B2 Number of Storeys	Yes	Yes
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	No	No
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	No
D1 Landscaped Open Space and Bushland Setting	No	No
D3 Noise	No	No
D6 Access to Sunlight	No	No
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	No	No
D14 Site Facilities	No	No
D20 Safety and Security	No	No
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	No	No
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

A.5 Objectives

The proposed development is inconsistent with the objectives at cl.A.5 (Objectives) of WDCP as it does not:

- i. Respond to the characteristics of the site and the qualities of the surrounding neighbourhood, or
- ii. Create a unified landscape, contribute to the street, reinforce the importance of pedestrian areas and create an attractive design outcome.

B3 Side Boundary Envelope

Description of non-compliance

Clause B3 of the WDCP Notes: *On corner allotments, to measure the side setback and side boundary envelope, the side boundaries are taken to be the boundaries that do not have frontage to a public street.*

The control has been applied to the northern elevation which presents to the driveway to the adjoining

residential building at 2-4 Francis Street and the western boundary.

The proposal breaches the 5m 45 degree control as follows:

- North elevation - Breach of the existing first floor (1.9m in height x 2.1m in length) and the new top floor addition (3m - 0m in height for a length of 26.1m).
- West elevation Breach of the existing first floor (1.92m in height x 1m in length) and the new top floor addition (2.2m - 0.5m in height for a length of 26.1m)

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:

Due to insufficient setbacks of the existing building and the new level two (2) addition the proposal breaches the envelope and is visually dominant by virtue of bulk and scale which is out of character with the area.

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

Comment:

As a result of inadequate setbacks of the existing building and the addition the proposal will result in an insufficient level of amenity being provided to the future occupants of the boarding house in terms of solar access.

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

Comment:

Not relevant, the site is level and contains no significant topographical features.

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.

B5 Side Boundary Setbacks

Description of non-compliance

Clause B5 of the WDCP notes:

On corner allotments, to measure the side setback and side boundary envelope, the side boundaries

are taken to be the boundaries that do not have frontage to a public street.

The applicable side boundaries are taken to be the northern and western boundaries.

The DCP requires a 4.5m setback to the north and west boundary to ensure adequate separation of this intensified use. There is no setback of the building to any boundary at ground or first floor level and the additional floor (level 2) is set back a non-compliant 3m from the north and west boundaries

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:

There is no opportunities for deep soil landscape areas that will allow for planting to reduce the bulk and scale of the development and provide for external amenity for future residents.

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

Comment:

As noted above, the zero side setback results in the building being visually dominate.

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

Comment:

As noted above, the zero side setbacks result in an inappropriate scale and bulk of the building.

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

Comment:

The proposal will result in unreasonable level of amenity to future residents in terms of privacy and solar access.

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

Comment:

The proposal will not cause any impacts in terms of view loss.

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 Setbacks

Description of non-compliance

Clause B7 requires a 6.5m front set back to the primary street and a 3.5m from the secondary frontage. There is no setback of the building to the primary or secondary frontage.

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:

With 100% site coverage there is no opportunity to create a sense of openness.

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

Comment:

The character of both Francis Street and Redman Road is that of residential flat buildings setback at least 6m from the frontage. As a direct result of the re-use of the building footprint of 100% site coverage the proposal fails to maintain the visual continuity and pattern of buildings and landscape elements in the surrounding area.

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

Comment:

As a result of the 100% site coverage and intensification in the use of the building the proposal fails to protect and enhance the visual quality of the streetscape and public spaces.

- *To achieve reasonable view sharing.*

Comment:

The proposal will not cause any impacts in terms of view loss.

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.

C2 Traffic, Access and Safety

Merit consideration

Council's Transport Engineer has raised issues with regards to the parking layout and access to the

development.

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

- *To minimise traffic hazards.*

Comment:

The turning path information does not demonstrate that all parking spaces within the development are able to be used by the B85 design vehicle and may result in vehicles having to reverse from the site into Redman Road. Furthermore, The visibility at the exit to the car park presents a significant pedestrian hazard and does not meet the requirements of standard AS2890.1 and presents a significant pedestrian hazard

- *To minimise vehicles queuing on public roads.*

Comment:

As discussed above, the proposal raises concerns about vehicles reverse from the site into Redman Road which may cause implications with regards to queuing on public roads.

- *To minimise the number of vehicle crossings in a street.*

Comment:

One vehicle crossing will be required to replace the existing crossing on Redman Road.

- *To minimise traffic, pedestrian and cyclist conflict.*

Comment:

For the reasons discussed above the proposal has the potential to cause unreasonable conflict between traffic, pedestrian and cyclist.

- *To minimise interference with public transport facilities.*

Comment:

As a result of vehicles reversing onto Redman Road the proposal has the potential to cause unreasonable interference with public buses passing the site.

- *To minimise the loss of "on street" kerbside parking.*

Comment:

The proposal will not result in a loss of on street parking.

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.

C3 Parking Facilities

Merit consideration

As discussed elsewhere in this report the car parking design is not compliant with the relevant standards.

C9 Waste Management

Merit consideration

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

- *To design and locate waste storage and collection facilities which are convenient and easily accessible; safe; hygienic; of an adequate size, and with minimal adverse impacts on residents, surrounding neighbours, and pedestrian and vehicle movements.*

Comment:

The proposed development is inconsistent with the Council's Waste Management Guidelines. The waste bin storage area is not large enough to contain the required number of bins. The access doors to the waste bin storage room and bulky goods storage room swing inwards.

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

As a direct result of the re-use of the building footprint of 100% site coverage there is no landscape open space provided.

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 proposal fails to maintain and enhance the streetscape or provide space on site to enable sufficient planting to mitigate the bulk and scale of the building.

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

Comment:

There is no vegetation, topographical features or habitat for wildlife on the site.

- *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 planter beds to the eastern elevation is not considered adequate so as to support effective landscaping to mitigate the height, bulk and scale of the building.

- *To enhance privacy between buildings.*

Comment:

The planter beds to the eastern elevation is not considered adequate so as to support effective landscaping to enhance privacy of the development.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

There is no outdoor recreational opportunities provided. The amenity for the future residents is assessed as inadequate.

- *To provide space for service functions, including clothes drying.*

Comment:

There is no external space provided for service functions including clothes drying.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

There is no on site detention proposed.

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.

D3 Noise

Merit consideration

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

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

Comment:

The design is not considered to be innovative or ensure design solutions to improve the urban environment.

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

Comment:

The bedroom windows to room 1 and 2 and area referenced as "private open space" all located at ground level front Francis Street. The internal amenity of these room will be compromised by virtue of potential acoustic and visual privacy issues especially given its corner location in a highly trafficked area close to Dee Why commercial centre.

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.

D6 Access to Sunlight

Merit consideration

The control requires at least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. The Affordable Housing SEPP also requires the common room to receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.

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:

Given the location of the common room within the south-east area of the ground floor reasonable access to sunlight can not be achieved in compliance with the control.

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

Comment:

The design is not considered to be innovative or ensure design solutions to improve the urban environment.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

As noted above, the proposal does not allow for a compliant solar access at mid winter sunlight to living rooms / high use indoor areas (the common room). The proposal fails to provide a sufficient level of internal amenity in terms of access to sunlight.

- *To promote passive solar design and the use of solar energy.*

Comment:

The solar panels on the roof are supported.

- *To minimise the need for artificial lighting.*

Comment:

There is inadequate development or articulation of the existing structure through the planning regime to address solar access to the majority of rooms and common circulation spaces within the development. As such, the proposal relies on artificial lighting.

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 bedroom windows to room boarding rooms 1 and 2 and the windows to the area referenced as "private open space" front Francis Street. The internal amenity of these room will be compromised by virtue of potential visual privacy issues especially noting the sites location close to the Dee Why commercial centre and a high level of pedestrian traffic in the area.

In addition, habitable room windows are sited 2.9m from the northern boundary which have the potential to result in overlooking to the windows and balconies at No. 2-4 Francis Street, Dee Why.

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

Comment:

The design is not considered to be innovative or ensure design solutions to improve the urban environment.

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

Comment:

The louvred screen along the Francis Street frontage of the area referenced as "private open space" raises concerns regarding personal and property security for occupants.

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

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 design is not considered to be innovative or ensure design solutions to 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 proposed development will result in overdevelopment and unacceptable intensification of the site within the existing building footprint. The proposal does not minimise the visual bulk of the development through: Articulation and modulation of facades / wall planes, use of high quality architectural materials, finishes and fenestration treatment, an increase in side and rear setbacks, and sufficient areas of deep soil planting to sustain adequate screen planting to soften the built form.

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.

D10 Building Colours and Materials

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 the colours and materials of new or altered buildings and structures are sympathetic to the surrounding natural and built environment.*

Comment:

The proposal includes the use of metal cladding which is not consistent or complementary to the predominant face brick and cement render evident in the surrounding area. The use of the metal cladding contributes to issues with regards to the commercial presentation of the residential building.

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.

D14 Site Facilities

Merit consideration

The waste and recycling facilities are not acceptable, refer to discussion under Clause C9. In addition, there is no external service facilities provided such as clothes drying.

Having regard to the above, 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.

D20 Safety and Security

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 maintains and enhances the security and safety of the community.*

Comment:

The proposal presents a conflict between pedestrians and vehicles, refer to comments from Transport Officer and discussion under Clause C2.

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.

D22 Conservation of Energy and Water

Merit consideration

While the re-use of the building is supported in principle there is inadequate planning to address cross ventilation and solar access to the majority of rooms and common circulation spaces within the development.

Having regard to the above, 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 inconsistent 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 \$19,491 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,949,090.

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

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

Character of the area

As a direct result of the re-use of the existing building with 100% site coverage, the use of inappropriate materials and lack of articulation the proposal is not compatible with the surrounding landscape or built form character contrary to provisions of the SEPP (ARH).

Bulk scale height and massing

The proposal represents overdevelopment of the site and breaches the built form controls of the WDCP. The bulk, scale and massing and height of the development fails to respond appropriately to the context of the site.

Amenity

The proposal provides an inadequate level of amenity for future residents with no external private open space and issues with solar access, cross ventilation and acoustic and visual privacy.

Traffic - road safety and parking

The proposed parking does not comply with the relevant standards and raises issues with regards to road safety.

Servicing

The bin store does not meet the waste requirements.

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 DA2020/1441 for the Alterations and additions to an existing commercial building and change of use to a boarding house on land at Lot A DP 345183, 2 B Francis Street, DEE WHY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the

proposed development is inconsistent with the aims and requirements of SEPP (Affordable Rental Housing) 2009, in terms of the following:

- The proposal is inconsistent with cl. 29 (b) (landscape area) as it does not respond to the characteristic or compatible with the surrounding landscape character.
 - The proposal is inconsistent with cl. 29 (c) (solar access) and (d) private open space as the communal living room provided within the south-east corner at ground level is a fully enclosed internal extension within the existing built fabric and does not provide adequate solar access. In addition, the private open spaces provided for the site manager at level 1 is fully enclosed internal extension within the existing built fabric with glass block windows to the north and open to the sky.
 - The proposal is inconsistent with Clause 30A (Character of the local area) as the significant re-development of the site to take advantage of its nil setbacks and nil landscaping but changing its use to residential does not respond to the character of Francis Street and Redman Road which consist of residential flat buildings setback at least 6m from the frontage in landscape settings. The lack of high quality architectural response to articulation, materials and fenestration treatments to appropriately break up the mass of the building or address the change of use and adaptive re-use of a commercial building to that of a residential typology will result in a building that is uncharacteristic of its predominant use and the neighbouring and adjacent contexts. The building retains a commercial 'curtain wall' appearance which is out of context and character to the adjoining residential buildings. In addition, there is no landscaping to soften the built form and ensure the consistency of the existing street pattern.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
 3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following objectives of Zone R3 Medium Density Residential of the Warringah Local Environmental Plan 2011. Objective 4 which requires low density residential environments to be characterised by landscaped settings that are in harmony with the natural environment of Warringah. Objective 5 which requires medium density residential environments are of a high visual quality in their presentation to public streets and spaces.
 4. The proposed development is inconsistent with the objectives at cl.A.5 (Objectives) of WDCP as it does not:
 - i. Respond to the characteristics of the site and the qualities of the surrounding neighbourhood,
 - or
 - ii. Create a unified landscape, contribute to the street, reinforce the importance of pedestrian areas and create an attractive design outcome.
 5. The proposal is inconsistent with the requirements and objectives of the following Clauses of the Warringah DCP 2011:
 - Clause B3 Side Boundary Envelope. Due to insufficient setbacks of the existing building and the new level two (2) addition the proposal breaches the envelope and is visually dominant by virtue of bulk and scale which is out of character with the area.

- Clause B3 Side Boundary Setbacks which requires a 4.5m side setback. There is no setback of the building to any boundary at ground or first floor level and the additional floor (level 2) is set back a non-compliant 3m from the north and west boundaries. There is no opportunities for deep soil landscape areas that will allow for planting to reduce the bulk and scale of the development and provide for external amenity for future residents. Due to insufficient setbacks the proposal will result in unreasonable level of amenity to future residents in terms of privacy and solar access.
- Clause B7 Front Boundary Setbacks which requires a 6.5m front set back to the primary street and a 3.5m from the secondary frontage. There is no setback of the building to the primary or secondary frontage. As a direct result of the re-use of the building footprint of 100% site coverage the proposal fails to maintain the visual continuity and pattern of buildings and landscape elements in the surrounding area.
- Clause C9 Waste Management, the Waste Management Guidelines and Clause D14 Site Facilities. The waste bin storage area is not large enough to contain the required number of bins and the access doors to the waste bin storage room and bulky goods storage room swings inwards. There is no external service facilities such as clothes drying.
- Clause C2 Traffic, Access and Safety and Clause D20 Safety and Security. The turning path information does not demonstrate that all parking spaces within the development are able to be used by the B85 design vehicle and may result in vehicles having to reverse from the site into Redman Road. The visibility at the exit to the car park presents a significant pedestrian hazard and does not meet the requirements of standard AS2890.1 and presents a significant pedestrian hazard. The louvered screen along the Francis Street frontage of the area referenced as "private open space" raises concerns regarding personal and property security for occupants.
- Clause D1 Landscaped Open Space and Bushland Setting. The proposal fails to maintain and enhance the streetscape or provide space on site to enable sufficient planting to mitigate the bulk and scale of the building. There is no outdoor recreational opportunities provided or external space for service functions. The amenity for the future residents is assessed as inadequate.
- Clause D3 Noise and D8 Privacy. The bedroom windows to room 1 and 2 and area referenced as "private open space" all located at ground level front Francis Street. The internal amenity of these room will be compromised by virtue of potential acoustic and visual privacy issues. The level 2 windows are located 2.9m from the northern boundary and have the potential to overlook the windows and balconies of the neighbouring residential building.
- Clause D6 Access to Sunlight and Clause D22 Conservation of Energy and Water. There is inadequate planning to address cross ventilation and solar access to the majority of rooms and common circulation spaces within the development. The common room located within the south-east area of the ground floor does not achieve reasonable access to sunlight.
- Clause D9 Building Bulk. The proposed development will result in overdevelopment and unacceptable intensification of the site within the existing building footprint. The proposal does not minimise the visual bulk of the development through: Articulation and modulation of facades / wall planes, use of high quality architectural materials, finishes

and fenestration treatment, an increase in side and rear setbacks, and sufficient areas of deep soil planting to sustain adequate screen planting to soften the built form.

- Clause D10 Building Colours and Materials. The proposal includes the use of metal cladding which is not consistent or complementary to the predominant face brick and cement render evident in the surrounding area.
6. Pursuant to Section 4.15 (1) (e) of the Environmental Planning and Assessment Act 1979 the proposal is not in the public interest.





<p>At all times, drawings are to remain within closed display.</p> <p>All electronic drawings are to be used in compliance with the standard standard equipment, and electronic and paper files are to be checked and updated on a regular basis to ensure the latest information is available.</p> <p>It is the responsibility of the user to ensure that the drawings are kept up to date for the convenience of all users, and to ensure that the drawings are kept up to date for the convenience of all users, and to ensure that the drawings are kept up to date for the convenience of all users.</p> <p>For more information, please contact the user.</p> <p>For more information, please contact the user.</p> <p>For more information, please contact the user.</p>		<p>PROPERTY:</p> <p>CJH INVESTMENTS PTY LTD</p>		<p>PROJECT TITLE:</p> <p>NEW GENERATION BOARDSHORE HOUSE DEVELOPMENT, 28 FRASER STREET, DEE WHY, 2099 (LOT A - DP 345183)</p>		<p>SHEET TITLE:</p> <p>ELEVATIONS</p>		<p>SCALE: 1:100</p> <p>DATE: 14/07/2018</p>	
<p>DR: 10/01/2018</p> <p>DA: 20/01/2018</p> <p>PSA: 14/07/2018</p> <p>Amendment / Issue</p>		<p>NO: 10/01/2018</p> <p>DA: 20/01/2018</p> <p>PSA: 14/07/2018</p> <p>Amendment / Issue</p>		<p>NO: 10/01/2018</p> <p>DA: 20/01/2018</p> <p>PSA: 14/07/2018</p> <p>Amendment / Issue</p>		<p>NO: 10/01/2018</p> <p>DA: 20/01/2018</p> <p>PSA: 14/07/2018</p> <p>Amendment / Issue</p>		<p>NO: 10/01/2018</p> <p>DA: 20/01/2018</p> <p>PSA: 14/07/2018</p> <p>Amendment / Issue</p>	



SCALE: 1:100	DATE: 14/07/20
DRAWN: SS	CHECKED: DAV
PROJECT NO: 2017/100	REV
DRAWING NO: DA07	DA

ITEM 3.7	DA2020/1487 - 89 CUTLER ROAD, CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2021/281345
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Report - Clause 4.6 - Height of Buildings 4 Report - Clause 4.6 - Floor Space Ratio

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 and floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council, as the consent authority, **approves** Development Consent to DA2020/1487 for alterations and additions to a dwelling house on land at Lot 2 Sec A DP 2610, 89 Cutler Road, Clontarf, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1487
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 2 DP 2610, 89 Cutler Road CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Anthony James Wagstaff Kate McLeod Newton
Applicant:	David Scott Design
Application Lodged:	02/12/2020
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: 15.3% 4.4 Floor space ratio: 31.7%
Recommendation:	Approval
Estimated Cost of Works:	\$ 700,000.00

EXECUTIVE SUMMARY

The proposed development seeks consent for alterations and additions to the existing dwelling house, including new kitchen addition, balconies, roof and external finishes, and various internal works.

The pitched roof of the existing dwelling has a maximum height of approximately 10.45m (23% variation). The proposed new roof form results in a reduced building height of 9.8m, or a variation of 1.3m (15.3%) to the height of buildings development standard. Despite the proposed breach, the new roof design represents a reduction to the overall building height of 0.65m.

The existing dwelling also includes a non-compliant floor space ratio of 0.56:1, a variation of 40.9%.

The proposal includes a minor increase of 12.2m² to the existing GFA, resulting in an overall FSR of 0.6:1 and variation of 48.8%.

Despite the variations to development standards, the dwelling additions are contained generally within the existing building footprint, below the existing roof ridge level, and do not result in any unreasonable building bulk or amenity impacts. An assessment of the proposed development standard breaches and the accompanying Clause 4.6 written request is undertaken within this report and is found to be satisfactory.

One submission was received in response to the notification of the application, and has been addressed within the assessment.

The proposal has been amended to address privacy impacts and reduce the bulk and view impacts associated with the new roof form.

The proposed variations to the height of buildings and floor space ratio development standards exceed 10% and the proposal relates to a dwelling house. As such, the application is referred to the Development Determination Panel for determination.

No further assessment issues are raised and the proposal is recommended for approval based on the detailed assessment within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for alterations and additions to the existing dwelling as follows:

- Enclose existing Entry Porch to create a new Kitchen
- Demolition and reconstruction of southern Ground Floor and Level 1 balconies
- New northern Level 1 deck
- Internal alterations to Ground Floor and Level 1
- Demolition of existing pitched roof and construction of new metal deck roof
- New external cladding
- Landscaping/planting works

The proposed works will result in:

Basement

- Existing Storage

Ground Floor

- Bed 1 with Ensuite and Robe
- Beds 2, 3, 4 & 5
- Bathroom
- Laundry
- Balcony

Level 1

- Kitchen, Living & Dining
- TV Room
- Bathroom
- Balcony
- Deck

Amendment of the proposed development

Following a preliminary assessment of the proposal and a submission received from the adjoining property, Council raised concerns with the proposal relating to privacy and view impacts.

The applicant submitted amended plans in response to these concerns, including the following changes:

- Upper level roof overhangs reduced by 500mm from the east and west sides, 435mm from the south, and a lowered pitch from 5 degrees to 2.5 degrees.
- Ground floor and level 1 southern balconies rounded and extended privacy screens provided at the eastern boundary.
- Extended privacy screen at the eastern elevation of the northern deck.

The amended proposal did not require renotification as it is considered to result in lesser environmental impacts. The objector was advised of the proposed amendments and provided a further submission in response, which is addressed in this report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.7 First Floor and Roof Additions
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 2 DP 2610 , 89 Cutler Road CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Cutler Road.</p> <p>The site is irregular in shape with a frontage of 11.915m along Cutler Road and a depth of 33.555m. The site has a surveyed area of 383.2m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates an existing dwelling and detached garage.</p> <p>The site slopes 12.36m from front (north) to rear (south), and includes a crossfall of 2.15m from east to west at the front of the site.</p> <p>The site contains one significant tree and a variety of smaller planted vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwellings. The site adjoins the harbour foreshore to the rear (south).</p>

Map:



SITE HISTORY

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

DA0192/97 - New garage to replace existing structure - Approved 21 July 1997.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
(EP&A Regulation 2000)	<p>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> <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 Matters for Consideration'	Comments
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 recommendations of the Bushfire Report and RFS referral are included in the 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 Peter Sotiriou	PO Box 73 MOSMAN NSW 2088

The matters raised within the submissions are addressed as follows:

- Privacy impacts resulting from northern deck and southern balconies
Comment:
The amended proposal includes full height privacy screening to the eastern elevation of the northern deck and southern balconies. The screening is considered to provide an acceptable level of privacy between the subject site and 87 Cutler Road, particularly given that the existing balconies and entry porch are unscreened to the eastern boundary.
- View impacts resulting from southern balconies and new roof
Comment:
A full view loss assessment is completed under Clause 3.4.3, based on the amended balcony and roof design. The view impact resulting from the balconies is generally limited to the available partial views from the middle level bedroom balcony, which are filtered through the existing balcony and vegetation within the foreshore reserve. The amendment of the upper level roof includes reductions of 500mm from the east and west side, 435mm from the south, and a lowered pitch from 5 degrees to 2.5 degrees. The amended roof now sits within the southern plane of the existing pitched roof, but still projects approximately 1.8m beyond the existing eastern roof plane towards 87 Cutler Road. It is noted that this addition beyond the existing roof envelope will result in some loss of water views, particularly from the northern part of the living room deck. However, as discussed in the view loss assessment, these views are vulnerable as they are obtained across a side boundary from deeper within the adjoining property. The view loss assessment finds that the overall impact is acceptable, and the amended proposal is supported.

- Glare impacts from new roof
Comment:
A condition is imposed requiring the new metal roofing be a medium to dark colour range to minimise glare and reflectivity impacts.
- Extension of southern balconies and setback non-compliances
Comment:
The amended southern balconies extend a maximum of 950mm beyond the existing at the eastern boundary, with an additional area of approximately 2m². This additional area is not considered to give rise to unreasonable bulk, view or privacy impacts in the context of the existing developments.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the alterations and additions to an existing residential dwelling. Alterations include the demolition and replacement of the existing roof, removal of existing retaining walls and re-cladding of existing external walls, with additions inclusive of an extension to an existing balcony and first floor, as well as a new deck on the first floor and retaining walls in the front of the site.</p> <p>Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping • 5.4.1 Foreshore Scenic Protection Area <p>Concerns were originally raised with the application regarding the effects of the proposed works on existing trees within the site, and the limited information available regarding proposed landscape works. Primarily, this was regarding a conflict between the proposed stair location and existing trees, and whether or not this existing tree was to be removed or not. An amended Landscape Plan has since been provided resolving this, and provided a positive landscape response as a result of this tree being removed. It is also worth noting another existing tree located centrally within the site has been removed since original comments were provided. The amended Landscape Plans propose substantial plantings of native shrubs, grasses and groundcovers, as well as an additional canopy tree to replace trees lost as a result of the proposal. For this reason, the removal of trees due to the stairway is supported as sufficient compensatory planting is proposed. The implementation of this proposed planting is necessary to satisfy control 3.3.1, as a key objective is "to encourage appropriate tree planting and maintenance of existing vegetation".</p>

Internal Referral Body	Comments
	<p>There are a number of other existing trees within the site and outside the boundaries within the road reserve, foreshore as well as adjoining property to the east. Within the site, an existing tree is located in the north-west corner of the property. Although this tree is located clear of the proposed works, it shall be required to be protected, particularly during the transportation of materials to and from site. In addition, all trees located outside of the existing legal boundaries shall be appropriately protected and retained throughout all stages of development. The retention of these trees is vital to satisfy controls 3.3.2 and 4.1.5, as key objectives include "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide", as well as "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area". In addition, the retention of existing vegetation is particularly important as the subject site is located within the terrestrial biodiversity area, as outlined in the Manly LEP - <i>Part 6.5 Terrestrial biodiversity</i>. Key objectives of this clause are to protect native flora and fauna, protect ecological processes as well as "encourage the conservation and recovery of native flora and fauna and their habitats".</p> <p>The landscape component of the proposal is therefore acceptable subject to the protection of existing trees and vegetation, as well as the completion of landscape works a proposed on the amended Landscape Plans.</p>
NECC (Bushland and Biodiversity)	<p>Council's Bushland and Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) Manly Local Environmental Plan (MLEP) - 6.5 Terrestrial Biodiversity</p> <p>The application does not impact on significant biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</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, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</p>

Internal Referral Body	Comments
	<p>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>Comment: On internal assessment and, the DA satisfies requirements under Clause 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> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</p> <p>Harbour Foreshores & Waterways Area</p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA.</p> <p>On internal assessment, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management</p> <p>The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p> <p>The DA is supported without any condition.</p>
NECC (Development)	

Internal Referral Body	Comments
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.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The NSW RFS raised no objection to the proposal, subject to the recommended conditions listed in the referral response. The recommended conditions are incorporated in to the conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A392851 dated 2 November 2020).

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 with suitable conditions recommended.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

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:

Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA. An assessment of the SREP provisions has been completed by Council's Coastal Officer.

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 proposal is unlikely to result in increased risk of coastal hazards on the site and surrounding land.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
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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	9.8m	15.3%	No
Floor Space Ratio	0.4:1 153.28m ²	0.6:1 228.1m ²	48.8%	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
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	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:	9.8m
Percentage variation to requirement:	15.3%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"The variation of height is unlikely to be visually apparent when viewed from the streetscape, as the proposed alterations and additions result in a lower ridge line to the existing. The proposed development on the sloped topography is considered to be compatible within other built forms in the locality, and is unlikely to result in an undesirable impact or outcome.*
- *The development has been designed to complement the existing scale and character of surrounding development. The building envelope of the building is compliant with the objectives behind LEP and DCP controls. The proposal will integrate seamlessly with the existing streetscape and does not result in adverse amenity impacts on adjoining properties in the way of bulk impact, shadow impact or privacy loss.*
- *The proposed development is consistent with the provisions of orderly and economic development of land, in that it proposes to provide high quality housing in a manner which meets the objectives of applicable controls. The proposed dwelling house development over its*

economic life is consistent with the promotion and coordination of the orderly use and development of land.

- *The above is considered to represent sufficient environmental planning grounds to justify the contravention of the development standard. It has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, and thus the resultant development will be in the public interest."*

Comment:

The existing dwelling was constructed in excess of 50 years ago, and exceeds the applicable 8.5m building height control by up to 1.95m. The proposed works beyond the 8.5m height plane are generally limited to the first floor balcony and living/dining roofs elements. The new roof forms will provide improved internal amenity to the dwelling and balcony, and result in a reduction to the overall height and bulk presented by the existing pitched roof.

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 and amenity, 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 E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed building height is lower than the existing and the new roof form achieves a greater level of consistency with the topography and surrounding development.

b) to control the bulk and scale of buildings,

Comment:

The proposed low-pitched roof design ensures an overall reduction to bulk and scale, despite the proposed variation.

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:

The proposed height breach is not considered to result in unreasonable impact to views to, from or between residential development and public places. A full assessment of views is completed under DCP Clause 3.4.3.

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 proposal will not result in adverse overshadowing impacts to surrounding properties or the public domain.

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 proposal has adequate regard for existing vegetation and topography in the vicinity of the site.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

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

Comment:

The proposed works are generally contained within the developed footprint of the site, and will not unreasonably impact the above values.

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

Comment:

The proposal is for alterations and additions to an existing dwelling house, which is a permissible use within the zone.

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

Comment:

The proposed development will not adversely impact tree canopies or dominate the scenic qualities of the foreshore.

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

Comment:

The proposal is appropriately designed and sited to avoid adverse impact to nearby foreshore areas, natural features and vegetation.

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

Comment:

The subject site is separated from the immediate foreshore, and the proposal provides a compliant landscaped area and new planting.

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

Comment:

The proposed works to the dwelling have appropriate regard for existing vegetation, topography and surrounding land uses.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management 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 buildings Development Standard associated with a single dwelling house (Class 1 building).

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (153.28m ²)
Proposed:	0.6:1 (228.1m ²)
Percentage variation to requirement:	48.8%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,

- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *"The development has been designed to complement the existing scale and character of surrounding development. The proposal seeks to provide a logical and reasonable land use that will not compromise the amenity of surrounding dwellings. The proposed additions are minor in nature and does not overshadow or result in overlooking of nearby dwellings living area. The nature of the application is to provide a better internal arrangement of the subject dwelling with some associate building upgrades that will pose nominal impact to the natural environment and the biodiversity significance of the area.*
- *The proposed development is consistent with the provisions of orderly and economic development of land, in that it proposes to provide additional indoor space for the dwelling under a logical arrangement. The dwelling house additions are acceptable and reasonable given that the proposal does not impact upon the privacy or overshadows nearby properties' living area.*
- *The above is considered to represent sufficient environmental planning grounds to justify the contravention of the development standard. It has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, and thus the resultant development will be in the public interest."*

Comment:

The additional gross floor area is achieved through the enclosure of the existing front entry porch, and provides improved amenity and internal configuration of the living level of the dwelling. The proposed kitchen addition follows the wall locations of the ground floor level, and is not considered to result in any adverse amenity impacts to the adjoining property. The increased GFA resulting from the kitchen addition is also partially offset by the increased southern setback provided to the first floor living/dining glazing.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed works are located to the rear of the existing garage do not result in a visually dominant development within the streetscape.

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

Comment:

The proposed FSR increase of 12.2m² is relatively minor in the context of the existing dwelling, and will not obscure any important landscape or townscape features.

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

Comment:

The kitchen addition is achieved through the in-fill of the existing front entry porch, and will maintain an appropriate visual relationship with the surrounding area.

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

Comment:

The additional GFA is not considered to adversely impact the use or enjoyment of adjoining land or the public domain.

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

Comment:

N/A

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

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

Comment:

The proposed works are generally contained within the developed footprint of the site, and will not unreasonably impact the above values.

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

Comment:

The proposal is for alterations and additions to an existing dwelling house, which is a permissible use within the zone.

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

Comment:

The proposed development will not adversely impact tree canopies or dominate the scenic qualities of the foreshore.

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

Comment:

The proposal is appropriately designed and sited to avoid adverse impact to nearby foreshore areas, natural features and vegetation.

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

Comment:

The subject site is separated from the immediate foreshore, and the proposal provides a compliant landscaped area.

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

Comment:

The proposed works to the dwelling have appropriate regard for existing vegetation, topography and surrounding land uses.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone.

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

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

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

6.2 Earthworks

No significant earthworks are proposed.

6.5 Terrestrial biodiversity

Council's Biodiversity team raised no objection to the proposal, subject to the recommended conditions of consent.

6.9 Foreshore scenic protection area

The proposal is for alterations and additions to an existing dwelling, and will not result in unreasonable impact in relation to visual aesthetic amenity or views to and from Sydney Harbour.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 383.2m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 8m	Kitchen: 7.7m - 8m	N/A	Yes
		Balcony: 8.8m	10%	No

	W: 7.4m	TV: 7.8m - 8.1m	9.5%	No
		Deck: 4.8m - 5.1m	N/A	Yes
4.1.2.2 Number of Storeys	2	3	N/A	Existing
4.1.2.3 Roof Height	Height: 2.5m	1.4m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Dwelling: 10m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E Kitchen: 2.57m - 2.67m	1.05m - 0.75m	71.9%	No
	E Balcony: 2.93m	0.3m - 0.4m	89.8%	No
	W TV: 2.6m - 2.7m	1.1m - 1.3m	57.7%	No
	W Deck: 1.6m - 1.7m	1.3m - 1.6m	18.75%	No
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	0.9m	88.75%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area 229.92m ²	60.3% 231.2m ²	N/A	Yes
	Open space above ground 25% of total open space	22%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 92.48m ²	44.5% 102.8m ²	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	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
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes

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
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.3.1 Landscaping Design

Council's Landscape officer raised no objection to the proposal, subject to the recommended conditions of consent.

3.4.1 Sunlight Access and Overshadowing

Compliance with control

91 Cutler Road

At 9am there is some additional overshadowing of the eastern wall and roof of 91 Cutler Road due to the increased height of the TV Room wall. There will be no impact to No. 91 after approximately 11am.

87 Cutler Road

At 12pm there is minor shadowing within the rear setback of 87 Cutler Road associated with the proposed rear balconies. During the afternoon and at 3pm there will be moderate overshadowing of the western elevation of 87 Cutler Road at the lower floor levels as a result of the kitchen addition. However, the living levels and private open spaces of No. 87 are generally located above the proposed eave level at the eastern boundary, and will remain largely unaffected.

Given the northerly orientation of the properties, a compliant level of sunlight access will be maintained to the subject site and adjoining dwellings throughout the day.

3.4.2 Privacy and Security

Compliance with control

The proposed windows and private open space areas maintain an appropriate level of privacy between the subject site and adjoining properties.

The ground floor windows are to bedrooms and service rooms, and are designed and located to minimise privacy impacts. The larger Bed 4 window W9/W10 is existing and is generally at ground level.

The Level 1 windows W15, W21 and W22 incorporate suitable privacy screens. Window W20 is to the new internal stair, and W18/W19 is an existing window.

The ground floor and level 1 balconies are orientated to the south towards the available views, and include privacy screening/blade walls to the east and west elevations to further direct the view and limit opportunities for overlooking. The northern deck also incorporates privacy screening to the eastern elevation, while the western wall of 91 Cutler Road that adjoins the deck contains limited window openings and will not be adversely impacted in terms of privacy. Despite the increased size of the southern balconies, the proposal is considered to result in an improved privacy outcome to the existing balconies, which are open to the eastern and western elevations. Further, the primary living areas and private open spaces at 87 Cutler Road, including the swimming pool and entertaining decks, are generally located above the first floor level of the subject dwelling, and will maintain sufficient privacy.

Given the above assessment the proposal is considered to result in acceptable privacy outcomes, and is supported.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example 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, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The available views from 87 Cutler Road are extensive water views of Middle Harbour, including land-water interface from Middle Head to Balmoral Beach, Wyargine Point and Chinamans Beach. The affected views include water views to Cobblers Bay and a small portion of land-water interface to the north of Chinamans Beach. The affected views from the upper level decks are whole views, while those from the middle level bedroom balcony are partial views that are obscured by the existing subject dwelling and vegetation to the west.

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:

The affected views are available from the middle level bedroom balcony, and the various upper level southern decks that are primary private open space areas accessed from the living areas of the dwelling. The views are obtained across a side boundary from a sitting or standing position. It should be noted that the sitting views on the living room deck of 87 Cutler Road would be significantly obscured by the solid western balustrade and planter boxes.



Photo 1. Affected views from middle level bedroom balcony.



Photo 2. Applicant's 3D view impact from bedroom balcony.



Photo 3. Affected views from upper level living room deck.

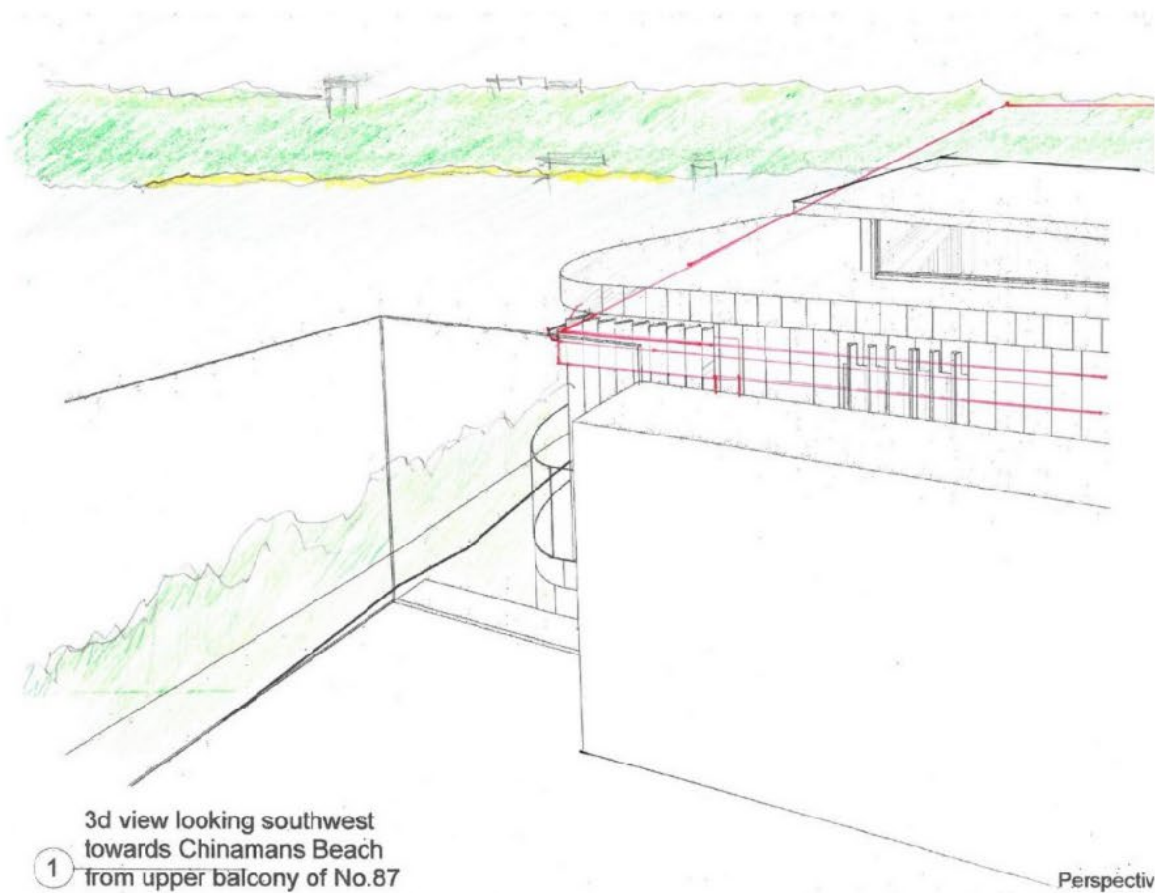


Photo 4. Applicant's 3D view impact from living room deck.



Photo 5. Affected views from upper level living room deck.

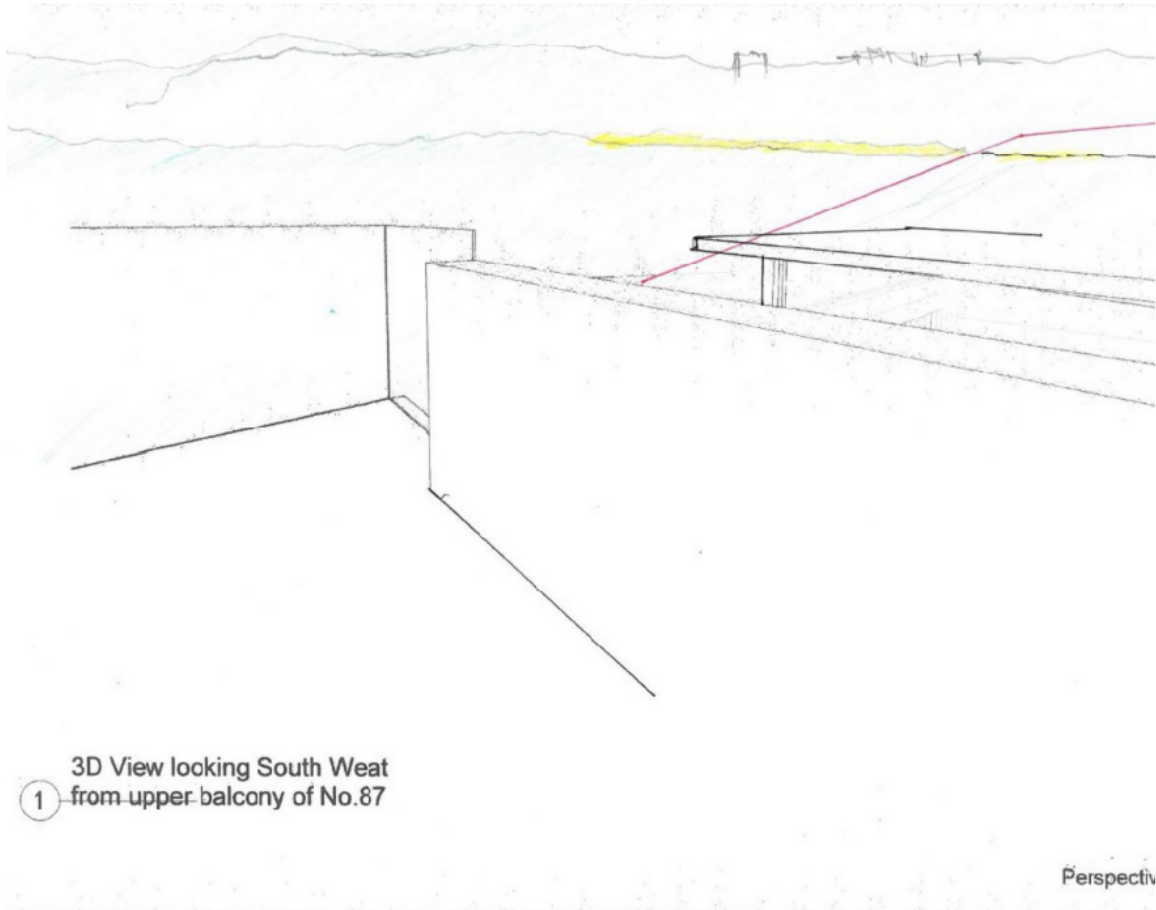


Photo 6. Applicant's 3D view impact from living room deck.

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 percent 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:

87 Cutler Road contains a number of substantial decks at the upper levels. The extent of the view impact varies depending on the location on the deck and the position of the subject on the deck.

Material impact to views is limited to the middle level bedroom balcony and living room deck of No. 87. The impact from the bedroom balcony is an area of water view and land-water interface to the north of Chinamans Beach, and water views that are filtered through the existing level 1 balcony of the subject site and vegetation beyond. The height non-compliant roofs over the balcony and living/dining room do not affect views from this location.

The new roofs over the first floor living/dining room and balcony will result in minor impact to water views beyond the envelope of the existing hipped roof. Both the lower and upper level 1 roofs have

been amended to reduce the associated view impacts, and are not anticipated to impact any land-water interface. The level of view impact worsens toward the northern end of the living room deck. However, this view angle is considered to be more vulnerable as the view is being achieved across a side boundary from centrally within No. 87, from a deck that projects towards a side boundary. The elevation of the living room and pool decks above the existing subject dwelling assist in retaining the majority of the available views from these areas. The overall impact is considered to be minor in the context of the affected views and the views to be retained.

The unaffected views are indicated in Photos 7-11 below. The swimming pool deck (Photo 10) is located a half-level above the living room deck, and will be largely unaffected by the development. Similarly, the top floor deck is located above the pool deck again, and the views from this level will also be retained.

Some views to the west toward The Spit escarpment will be returned as a result of the lower overall roof height of the development, as indicated in the 3D perspectives provided by the applicant (Photos 4 & 6).



Photo 7. Unaffected views from middle level bedroom balcony.



Photo 8. Unaffected views from upper level living room deck.



Photo 9. Unaffected views from upper level living room deck.



Photo 10. Unaffected views from upper level swimming pool deck.



Photo 11. Unaffected views from upper level swimming pool deck.

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:

The proposal is non-compliant in relation to building height, floor space ratio, wall height, and side and rear setbacks. Given the location of the offending elements, the relevant non-compliances are building height and rear setback. Notwithstanding the non-compliant building elements, the proposal is considered to be acceptable given the extensive views to be retained from various locations within No. 87, the extent and value of the affected views as discussed above, and the vulnerability of these affected views being achieved across a side boundary.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

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

Description of non-compliance

The proposed eastern Level 1 Balcony privacy screen height of 8.8m is non-compliant with the 8m wall height control. The remainder of the eastern elevation complies with the control and/or is existing.

The proposed western TV Room wall height of 8.1m is non-compliant with the 7.4m control. The remainder of the western elevation is an existing wall.

Merit consideration

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

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

Comment:

The proposed wall heights and roof form are generally consistency with the topography and prevailing building heights. The proposed non-compliant works occur at the south of the dwelling and are largely imperceptible within the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposed wall height breaches do not result in excessive bulk or scale. The eastern side breach relates to a privacy screen, and the western side breach relates to an existing wall that is increased 1.2m in height to allow for improved solar access.

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:

The proposal will not result in unreasonable view loss impacts from surrounding dwellings or the public domain.

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 proposed development retains sufficient sunlight access to the subject site and surrounding properties.

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 proposed building has adequate regard for the existing topography and vegetation, and will not conflict with surrounding land uses or bushland.

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

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

Description of non-compliance

The proposed eastern 0.75m-1m side setback to the Kitchen is non-compliant with the control. The 0.3m eastern side setback to the southern balconies is also non-compliant. The Dining Room wall is retained as existing.

The proposed western side setbacks of 1.1m to the TV Room and 1.3m to the front (northern) deck are non-compliant with the respective controls. It is noted that the TV Room wall is existing, but the setback requirement is increased due to the proposed increased wall height. The remainder of the western wall is existing.

The proposed rear setback of 0.9m is non-compliant with the 8m control.

Merit consideration:

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

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

Comment:

The proposed side setback breaches occur behind the existing garage at the front boundary, and will not be visually prominent within the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed setback non-compliances will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

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

Comment:

The setback non-compliances discussed above are largely a result of the siting of the existing dwelling in the south-eastern corner of the site. The Kitchen addition follows the line of the eastern ground floor wall below, and the height of the western TV Room wall is increased at the existing setback. The proposed reconstruction of the southern balconies provides a greater minimum rear setback than the existing locations. Notwithstanding the irregular siting of the existing dwelling and the proposed non-compliances, the proposal is considered to be appropriately designed to minimise the impacts to adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal includes a compliant landscaped area for new planting.

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

Comment:

Despite the setback non-compliances, the recommendations of the Bushfire Report and NSW RFS referral are incorporated into the conditions of consent.

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

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

No change is proposed to the existing compliant car parking provision.

4.1.7 First Floor and Roof Additions

Compliance with control

The proposal includes aesthetic upgrades of the existing dwelling, with new balconies, glazing, cladding

and roofing. The existing external walls are largely retained, and the proposed kitchen addition follows the line of the of the existing eastern and northern walls below. Despite the proposed setback non-compliances, the development is not considered to result in unreasonable impacts to the amenity of adjoining properties, as detailed under Clause 4.1.4 Setbacks.

4.1.8 Development on Sloping Sites

The site is mapped as Landslip Risk Area G1 and a Geotechnical Report accompanies the proposal. The Geotechnical Report confirms that the development is suitable for the site, subject to the included recommendations.

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 \$7,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$700,000.

CONCLUSION

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

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings 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.

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

The key planning issues considered within the assessment are the proposed variations to development standards, and the resulting view and amenity impacts of the works.

Notwithstanding the proposed building height variation of 15.3% and floor space variation of 48.8%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

One submission was received in relation to the view and amenity impacts of the proposal, and is addressed within the report.

Assessment of the application against the Manly LEP and DCP finds that the development is suitable in the context of the site, and 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 and 4.4 Floor Space Ratio development standards 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 DA2020/1487 for Alterations and additions to a dwelling house on land at Lot 2 DP 2610, 89 Cutler Road, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 Site and Roof Plan	Rev. B, November 2020	David Scott Design
DA04 Basement Floor Plan	Rev. A, November 2020	David Scott Design
DA05 Ground Floor Plan	Rev. B, November 2020	David Scott Design
DA06 Level 1 Floor Plan	Rev. B, November 2020	David Scott Design
DA07 North and South Elevations	Rev. B, November 2020	David Scott Design
DA08 East Elevation	Rev. B, November 2020	David Scott Design
DA09 West Elevation	Rev. B, November 2020	David Scott Design
DA10 Sections	Rev. B, November 2020	David Scott Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment	23 September 2019	Ascent Geotechnical Consulting
Bushfire Hazard Assessment	16 October 2020	Bushfire Planning & Design

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan	March 2021	iScape Landscape Architecture

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

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

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 (19/12/2020)	Undated
NSW Rural Fire Service	RFS Referral Response	22 December 2020

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

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

3. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which

the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

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

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

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

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

- (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerage 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 \$7,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$700,000.00.

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

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$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. **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 demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

9. **Boundary Identification Survey**

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

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

this consent.

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

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

10. 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.

11. External Finishes to Roof

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. Project Arborist

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

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

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

All tree protection measures specified must:

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

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out

satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

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

Reason: Tree protection.

13. **Tree Removal Within the Property**

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

- i) assumed *Cyathea cooperi*, located adjacent to the western boundary within the proposed works footprint.

Note:

- i) Exempt Species as listed in the Arboricultural Impact Assessment or the Development Control Plan do not require Council consent for removal,
- ii) Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

Reason: To enable authorised building works.

14. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **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 sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

16. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on

Development Sites.

As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

17. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period,

and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

18. **Road Reserve**

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

Reason: Public safety.

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

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

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

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

20. **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.

21. **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.

22. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

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

23. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved amended Landscape Plan, inclusive of the following conditions:

i) tree planting shall be located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings, and other trees.

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

Reason: Environmental amenity.

24. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

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

Reason: Tree protection.

25. **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.

26. **No Weeds Imported On To The Site**

No Priority or environmental weeds 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.

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

27. **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.

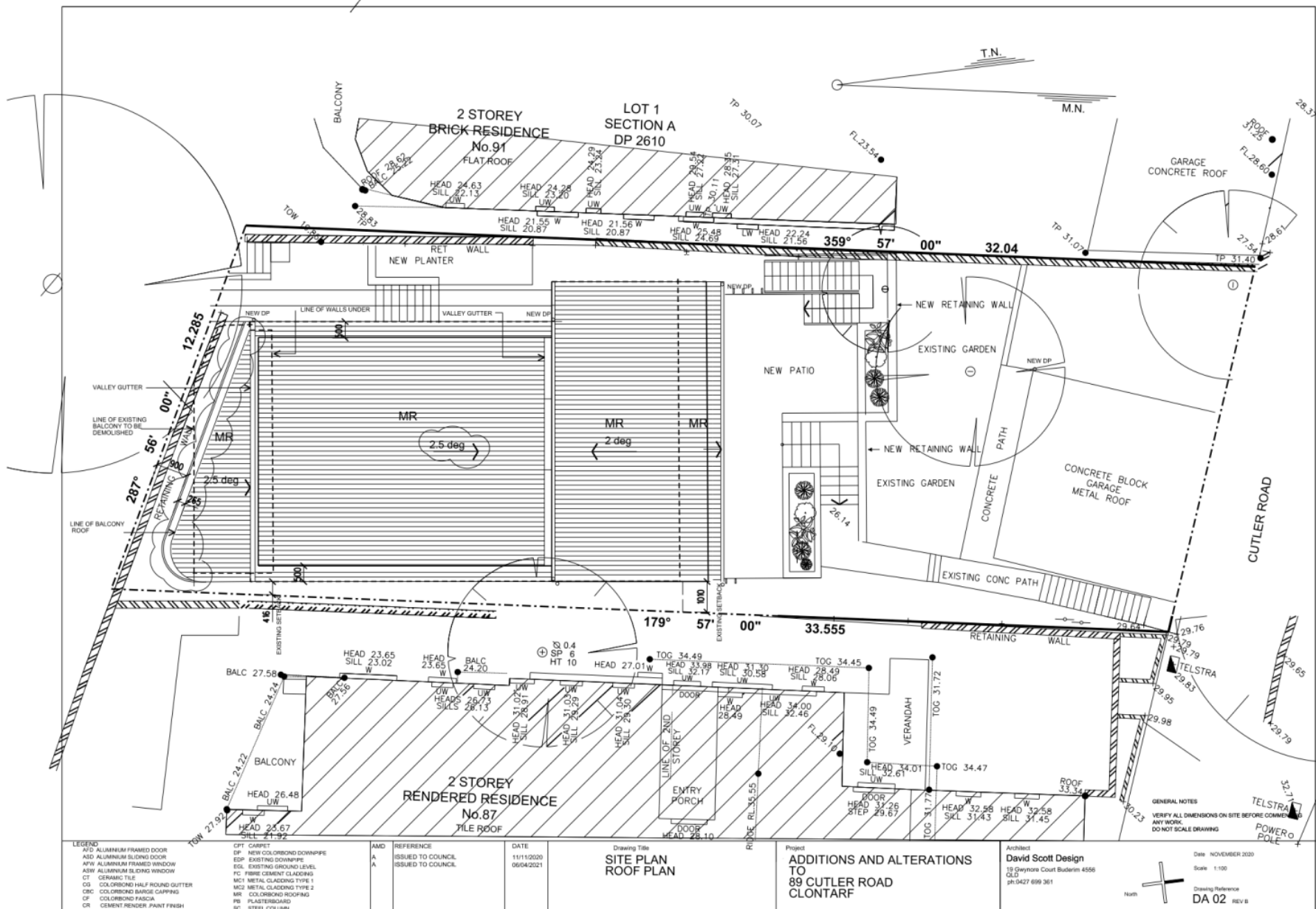
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

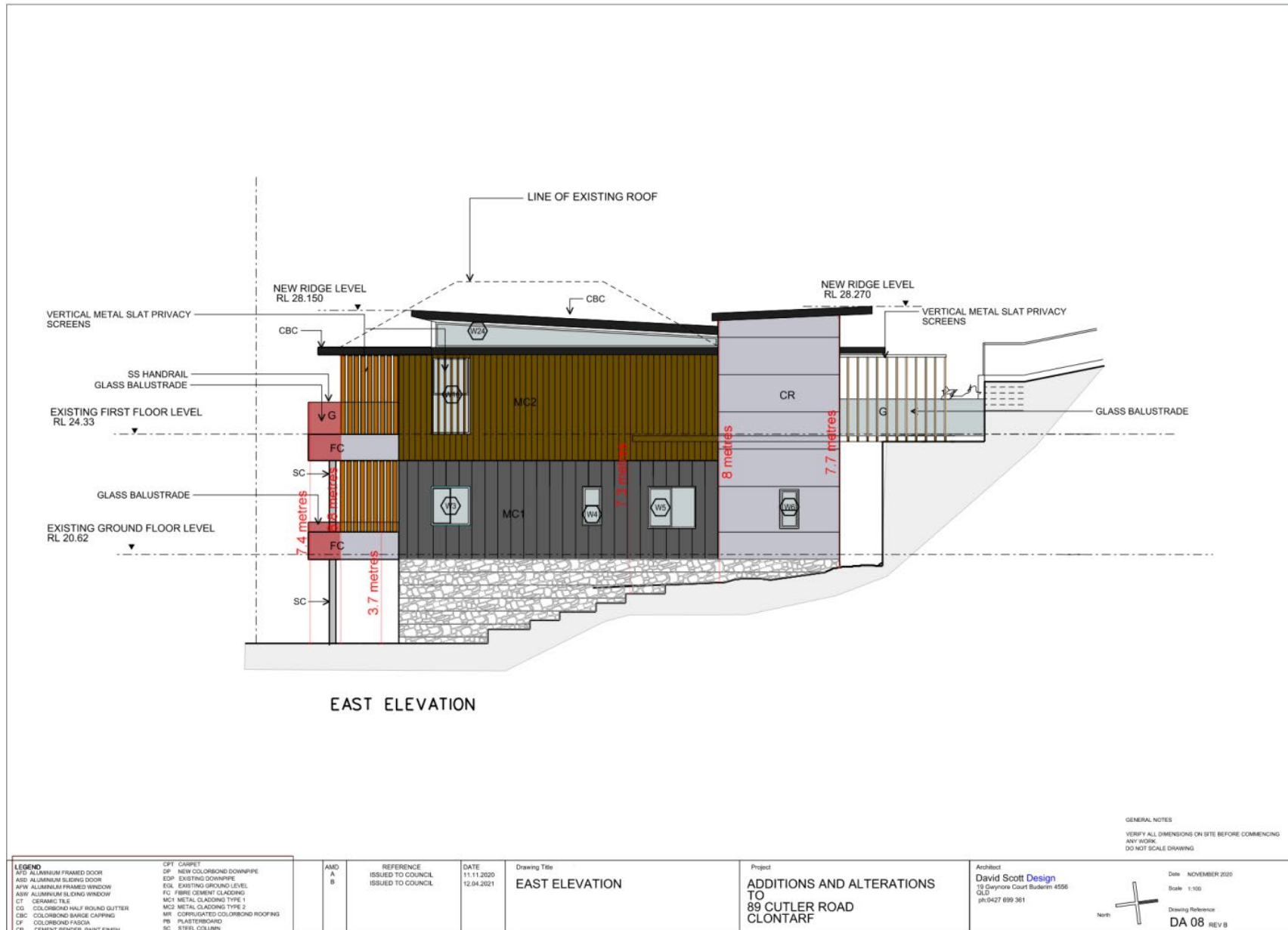
28. **Geotechnical Recommendations**

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.











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23 November 2020

The General Manager
Northern Beaches Council
1 Belgrave Street
MANLY NSW 2095

Dear Sir/Madam,

89 Cutler Road, Clontarf
Clause 4.6: Exceptions to Development Standards
Height of Buildings (Clause 4.3) – Manly Local Environmental Plan 2013

1. Introduction

Clause 4.3 of Manly Local Environmental Plan (MLEP) 2013 relates to the maximum **building height** requirements and states that “the maximum building height for a building on any land is not to exceed the building height shown for the land on the Height of Buildings Map”. The Height of Buildings map stipulates that the maximum building height for 89 Cutler Road, Clontarf is 8.5m.

The architectural plans submitted with the Development Application at 89 Cutler Road, Clontarf for the “alterations and additions to dwelling house” indicate that the proposed development has a building height of 10.646 metres, resulting in a 20% variation to the development standard and non-compliance of 2.14 metres.

The height variance is related to the topography of the site falling from Cutler Street (RL 28.61) towards the rear existing ground level (RL 17.814) of the site by approximately 10.796 metres. More specifically, the northern elevation from ground level to the proposed roofline is 8.062 metres, and the southern elevation will remain 10.646 metres in height as per existing due to the sloped topography of the site. The height of the proposal is 0.76 metres lower in height to the existing ridge line, therefore will not result in discernible view loss, bulk, overshadowing or other impact for the adjoining neighbours and surrounding locality.

The proposal is of a reasonable scale and provides a high quality and durable dwelling house development which assists to meet the high demand for spacious housing in the Clontarf locality. The development is commensurate in scale and character with other properties in the streetscape, and

meets the objectives behind every Manly Development Control Plan 2013 control. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, solar access and overall amenity of surrounding properties.



Figure 1 – Existing rear façade of the property to be maintained.

2. Clause 4.6

An application to vary a development standard can be made under Clause 4.6 of MLEP 2013.

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,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6(3) specifies that:

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.

Clause 4.6(4) specifies that:

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.

These matters are considered below.

3. Justification of proposed variance

Samadi v Council of the City of Sydney [2014] NSWLEC 1199 provides jurisdictional guidance on the assessment of variations under Clause 4.6.

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)(i)). 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)).'

4. Precondition 1 – Consistency with zone objectives

The land is located in the E3 – Environmental Management zone under the Manly Local Environmental Plan 2013.

The objectives of the zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The development is compatible with the zone objectives as the proposed alterations and additions to the dwelling house it increases the amenity of the property and meet day to day needs of the residents, with respect to the existing streetscape and vegetation surrounding the site. The proposed development recognises the desirable elements of the existing streetscape and built form by proposing a contemporary renovation to the existing dwelling house of a height, bulk, and scale commensurate with emerging contemporary built forms in the immediate locality. The proposal is designed in a manner that will contribute to the desired future character of the area and does not dominate the natural scenic qualities of the foreshore.

The variation to the maximum building height does not render the development incompatible with the zone objectives, in accordance with the approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21, in Paragraph [27]:

‘The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.’

5. Precondition 2 – Consistency with the objectives of the standard

The objectives of the maximum building height as specified in Clause 4.3 are:

- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,*
- (b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
- (c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

The variation is supportable in relation to the aforementioned objectives.

Objective (a) – The development results in no unreasonable adverse impacts on adjoining properties. The development does not impact any neighbouring residential developments in relation to solar access or privacy. There is no view loss impact. Subsequently the development does not detract from the desired future character of the locality.

Objectives (b) and (c) – The proposal is considered compatible with its context as:

- The development is consistent with the height, scale and character of development in the locality. The bulk and scale of the development is reasonable and does not visually dominate neighbouring properties.
- The proposed 20% variation from the maximum building height is reasonable in comparison to nearby sites. The below table demonstrates that properties within the same locality who exceed their maximum building height, as stipulated by Clause 4.3 of the MLEP 2013. This highlights that the area is characterised by similar densities to that of the proposal.

Site address	Extent of Variation from Maximum Building Height
59 Cutler Road, Clontarf	7%
3 Alma Street, Clontarf	29%
404 Sydney Road, Balgowlah	44.80%
8 Alma Street, Clontarf	9.40%
43 West Street, Balgowlah	20.70%
14A Beauty Street, Balgowlah Heights	8.20%

1-3 Amiens Road, Clontarf	27.60%
77 Cutler Road, Clontarf	5.59%
43 Peronne Avenue, Clontarf	20.40%
88 Cutler Road, Clontarf	11.70%
22 Amiens Road, Clontarf	23.50%
13 Sandy Bay Rad, Clontarf	11.30%

Table 1 – Nearby properties with approved maximum building height variation. Information derived from the Planning Register (2016 – 2020) available on Northern Beaches Council’s website.

The proposed height is considered to be consistent with other approved dwelling houses with the locality on sloping sites which exceed the height limit. The non-compliance of 2 metres in height is attributed to the sloping topography of the site which contains a cross fall. Notwithstanding the prescribed height requirement of 8.5 metres, the proposed height of 10.6 metres results in a building height which is generally consistent with the prevailing building height of dwellings within the locality. Despite the numerical variation, the objective of this clause to control the bulk and scale of the development has been achieved.

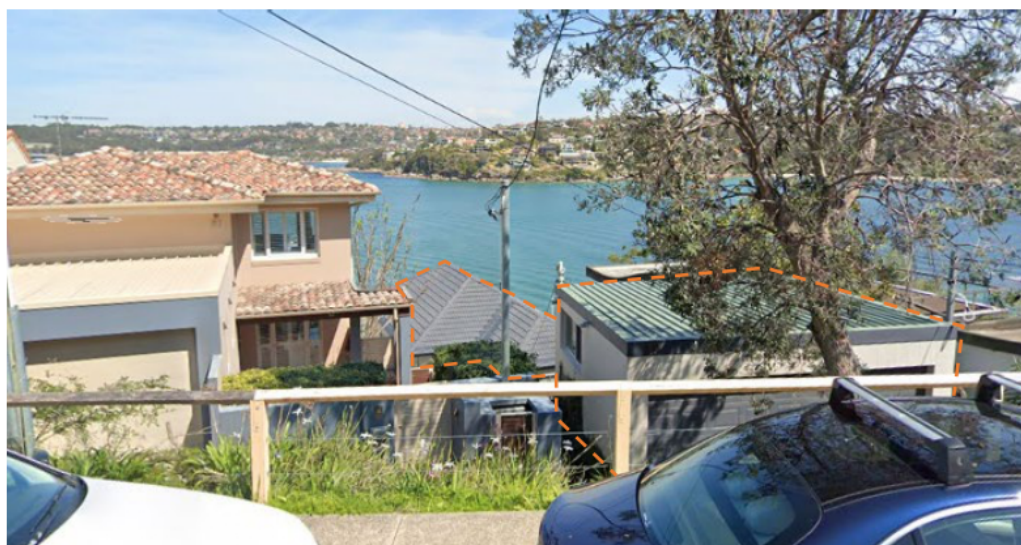


Figure 2 - View overlooking subject site from Cutler Road. It is considered that the views are retained for adjoining properties as the proposed roof will be lower in height to the existing. (Google Maps, 2018)

6. Precondition 3 – To consider a written request that demonstrates that compliance with the development standards is unreasonable or unnecessary in the circumstance of the case.

Wehbe vs Pittwater Council [2007] NSWLEC 827 establishes the five-part test for determining whether strict compliance with the development standard is deemed unnecessary or unreasonable. These five ways have recently been re-emphasised in the *Four2Give Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 cases, by Commissioner Morris in *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312 and by Commissioner Tuor in *Moskovich v Waverley Council* [2016] NSWLEC 1015. This approach has recently been upheld in the case of *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386. An appeal on a point of law against this decision by Randwick Council was dismissed by Commissioner Morris on 19 February 2016: *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7.

In the decision of *Wehbe vs Pittwater Council*, Preston CJ established the five ways in which an objection has been well founded and that approval of the objection may be consistent with the aims of the policy:

- 'the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
- the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
- 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; and
- the zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.'

It is noted that each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in each case. Therefore, not all tests need to be met.

Test	Comment
1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard	Yes — The development meets the objectives of the development standard demonstrated in part 5 of this document.
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary	Not applicable — The purpose of the standard is relevant.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required	Not applicable — Compliance does not defeat the underlying object of the standard development; however, compliance would

with the consequence that compliance is unreasonable	prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as discussed in part 4 of this document.
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	Not applicable — the development standards of maximum building height cover a wide area and whilst they are not appropriate to this site, they are appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standards have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's actions.
5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.'	Not applicable — The zoning of the site is not considered to be inappropriate.

Application of the above tests thus demonstrate that strict numerical compliance is unreasonable and unnecessary for this proposal. The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives.

The variation of height is unlikely to be visually apparent when viewed from the streetscape, as the proposed alterations and additions result in a lower ridge line to the existing. The proposed development on the sloped topography is considered to be compatible within other built forms in the locality, and is unlikely to result in an undesirable impact or outcome.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

The proposed development is consistent with the provisions of orderly and economic development of land, in that it proposes to provide high quality housing in a manner which meets the objectives of

applicable controls. The proposed dwelling house development over its economic life is consistent with the promotion and coordination of the orderly use and development of land.

8. 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

This report is the written request demonstrating that there are sufficient environmental planning grounds to justify deviation from the development standard.

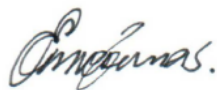
The development has been designed to complement the existing scale and character of surrounding development. The building envelope of the building is compliant with the objectives behind LEP and DCP controls. The proposal will integrate seamlessly with the existing streetscape and does not result in adverse amenity impacts on adjoining properties in the way of bulk impact, shadow impact or privacy loss.

The above is considered to represent sufficient environmental planning grounds to justify the contravention of the development standard. It has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, and thus the resultant development will be in the public interest.

9. Conclusion

The proposal seeks a variation to the maximum building height development standard prescribed in Clause 4.3 of Manly Local Environmental Plan 2013.

This submission is considered to adequately address the matters required by Clause 4.6. The proposal meets the assessment criteria set out in Clause 4.6 (3) (a) and (b) and (4) (a). As demonstrated, strict compliance with the prescribed maximum building height development standard is unreasonable and unnecessary in the circumstances of the case. The proposal is in the public interest because it is consistent with the objectives of the E3 – Environmental Management zone and the objectives for maximum building height standard. There are thus sufficient environmental planning grounds to justify the non-compliance.



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26 November 2020

The General Manager
Northern Beaches Council
1 Belgrave Street
MANLY NSW 2095

Dear Sir/Madam,

89 Cutler Road, Clontarf
Clause 4.6: Exceptions to Development Standards
Floor Space Ratio (Clause 4.4) –Manly Local Environmental Plan 2013

1. Introduction

Clause 4.4 of Manly Local Environmental Plan (MLEP) 2013 relates to the maximum floor space ratio (FSR) requirements and states that “the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map”. The Floor Space Ratio map stipulates that the maximum FSR for 89 Cutler Road, Clontarf is 0.4:1.

The architectural plans submitted with the Development Application at 89 Cutler Road, Clontarf for the “alterations and additions to existing dwelling” indicate that the proposed development has a GFA of 199.26 square metres, and a subsequent floor space ratio (FSR) 0.52:1, resulting in a 30% variation to the development standard and non-compliance of 45.98 square metres.

The proposal is of a reasonable scale and provides a high quality and durable dwelling house development which assists to meet the high demand for housing needs in the Clontarf locality. The development is commensurate in scale and character with other properties in the streetscape. The variation results in the substantial increase in amenity for the subject site without producing any adverse impacts on the privacy, views, solar access and overall amenity of surrounding properties.

2. Clause 4.6

An application to vary a development standard can be made under Clause 4.6 of MLEP 2013.

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,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6(3) specifies that:

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.

Clause 4.6(4) specifies that:

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.

These matters are considered below.

3. Justification of proposed variance

Samadi v Council of the City of Sydney [2014] NSWLEC 1199 provides jurisdictional guidance on the assessment of variations under Clause 4.6.

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)).'

4. Precondition 1 – Consistency with zone objectives

The land is located in the E3 – Environmental Management zone under the Manly Local Environmental Plan 2013.

The objectives of the zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposed development is for house alterations and additions in an appropriate and acceptable scale. The proposal does not impact upon the areas of special ecological, scientific, cultural or aesthetic values. The subject site remains to be used as a residential dwelling house and the proposal does not increase the number of dwelling. No trees will be removed as a result of the proposal. Instead, new landscaping area and planters will be added to introduce a higher variety of

flora species onsite. The proposed height and bulk of the building has been carefully designed that it will pose nominal impact to the existing vegetation, topography and surrounding land uses.

The variation to the floor space ratio does not render the development incompatible with the zone objectives, in accordance with the approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21, in Paragraph [27]:

‘The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.’

5. Precondition 2 – Consistency with the objectives of the standard

The objectives of the floor space ratio controls as specified in Clause 4.4 are:

- 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.*

The variation is supportable in relation to the aforementioned objectives.

Objective (a) – The proposed bulk and scale of the development is considered to be acceptable and consistent with the existing streetscape. Due to the sloping nature of the site and the fact that most proposed alterations take place behind the front façade, the new works would not impact the streetscape as they are screened by the building façade. The only new changes visible to the street are the new privacy screens and the new concrete slab. These changes are minimal and do not impact the presentation of the building to Cutler Road.

Objective (b) – The building density and bulk are regulated to minimise the impact of new developments to important landscape and townscape features. It is understood that the building height and FSR does not comply with the controls as stipulated in MLEP 2013. However, the site constraints should be considered when assessing the noncompliance. The site slopes from the

street to the rear of the property by approximately 10 metres. In order to support the building, structural walls are to be erected to ensure the structural soundness of the dwelling. The noncompliance does not result in any adverse impacts to the surrounding landscape or important townscape features.

Objective (c) – The proposal is considered compatible with its context as:

- The development is consistent with the scale and character of development in the locality. The bulk and scale of the development is reasonable and does not visually dominate neighbouring properties.
- The proposed 30% variation from the maximum FSR is minor in comparison to nearby sites. The below table demonstrates that properties within the same locality with E3 – Environmental Management zoning who exceed their maximum FSR, as stipulated by Clause 4.4 of the MLEP 2013. This highlights that the area is characterised by similar densities to that of the proposal.

Site address	Extent of Variation from Maximum FSR
98 Cutler Road, Clontarf	115%
88 Cutler Road, Clontarf	70%
74 Cutler Road, Clontarf	52.5%
65 Cutler Road, Clontarf	42.5%
92 Cutler Road, Clontarf	12.5%
79 Cutler Road, Clontarf	10%
77 Cutler Road, Clontarf	7.5%

Table 1 – Nearby R3 – Medium Density Residential zoned properties with approved maximum FSR variation. Information derived from the Planning Register 2013 – 2018 available on Waverley Council's website.

Objective (d) – The development results in no unreasonable adverse impacts on adjoining properties. The development does not impact any neighbouring residential developments in relation to solar access or privacy. There is no view loss impact. Subsequently the development does not detract from the desired future character of the locality.

Objective (e) – Not applicable.

6. Precondition 3 – To consider a written request that demonstrates that compliance with the development standards is unreasonable or unnecessary in the circumstance of the case.

Wehbe vs Pittwater Council [2007] NSWLEC 827 establishes the five-part test for determining whether strict compliance with the development standard is deemed unnecessary or unreasonable. These five ways have recently been re-emphasised in the *FouR3Give Pty Ltd v Ashfield Council* [2015] NSELEC 1009 cases, by Commissioner Morris in *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312 and by Commissioner Tuor in *Moskovich v Waverley Council* [2016] NSWLEC 1015. This approach has recently been upheld in the case of *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386. An appeal on a point of law against this decision by Randwick Council was dismissed by Commissioner Morris on 19 February 2016: *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7.

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Test	Comment
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2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary	Not applicable — The purpose of the standard is relevant.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable	Not applicable — Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development and prevent the site to better meet the zoning objectives as discussed in part 4 of this document.
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	Not applicable — the development standards of FSR cover a wide area and whilst they are not appropriate to this site, they are appropriate to other sites elsewhere in the locality. There are numerous instances where consents departing from the standard have been approved and others where the standards have been upheld. This is more an indication of the inappropriateness of particular standards to some sites rather than a comment on Council's actions.
5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.'	Not applicable — The zoning of the site is not considered to be inappropriate.

Application of the above tests thus demonstrate that strict numerical compliance is unreasonable and unnecessary for this proposal. The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

The proposed development is consistent with the provisions of orderly and economic development of land, in that it proposes to provide additional indoor space for the dwelling under a logical arrangement. The dwelling house additions are acceptable and reasonable given that the proposal does not impact upon the privacy or overshadows nearby properties' living area.

8. 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

This report is the written request demonstrating that there are sufficient environmental planning grounds to justify deviation from the development standard.

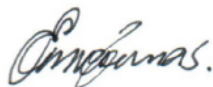
The development has been designed to complement the existing scale and character of surrounding development. The proposal seeks to provide a logical and reasonable land use that will not compromise the amenity of surrounding dwellings. The proposed additions are minor in nature and does not overshadow or result in overlooking of nearby dwellings living area. The nature of the application is to provide a better internal arrangement of the subject dwelling with some associate building upgrades that will pose nominal impact to the natural environment and the biodiversity significance of the area.

The above is considered to represent sufficient environmental planning grounds to justify the contravention of the development standard. It has been demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, and thus the resultant development will be in the public interest.

9. Conclusion

The proposal seeks a variation to the floor space ratio development standard prescribed in Clause 4.4 of Manly Local Environmental Plan 2013.

This submission is considered to adequately address the matters required by Clause 4.6. The proposal meets the assessment criteria set out in Clause 4.6 (3) (a) and (b) and (4) (a). As demonstrated, strict compliance with the prescribed floor space ratio development standard is unreasonable and unnecessary in the circumstances of the case. The proposal is in the public interest because it is consistent with the objectives of the E3 Environmental Management zone and the objectives for Floor Space Ratio standard. There are thus sufficient environmental planning grounds to justify the non-compliance.



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