AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 12 MAY 2021

Ashleigh Sherry
Manager Business Systems and Administration

northern
beaches
council

northern beaches council

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 12 May 2021

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 28 APRIL 2021

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 28 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	**DA2020/0932 - 29 BAKERS ROAD CHURCH POINT - CONSTRUCTION OF A SECONDARY DWELLING**
REPORTING MANAGER	**Lashta Haidari**
TRIM FILE REF	**2021/317505**
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 DA2020/0932 for construction of a secondary dwelling on land at Lot 1 DP 206824, 29 Bakers Road Church Point, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0932

Responsible Officer:	Ashley Warnest
Land to be developed (Address):	Lot 1 DP 206824, 29 Bakers Road CHURCH POINT NSW 2105
Proposed Development:	Construction of a secondary dwelling
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Carlos Souza
Applicant:	Carlos Souza

Application Lodged:	18/08/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	27/08/2020 to 10/09/2020
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 21.8%
Recommendation:	Approval

Estimated Cost of Works:	$ 204,670.00

EXECUTIVE SUMMARY

The proposal is for the construction of a secondary dwelling at 29 Bakers Road. The works result in a variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) of 21.8%. However, a written request by the applicant has sufficiently justified varying the standard. The extent of the non-compliance can be attributed to the slope of the site and the retention of natural features such as vegetation and bushrock. The proposed secondary dwelling is elevated over two large bushrock protrusions. The siting and design of the secondary dwelling will not only ensure that the natural features are retained but also a feature of the proposal. Despite the numeric noncompliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the adjoining or surrounding properties and minimises environmental impacts.

The proposal does not result in further variation to the built form controls of the Pittwater 21 Development Control Plan (P21 DCP). The proposed secondary dwelling does not result in adverse

amenity impacts and is consistent with the objectives of the controls.

One submission was received throughout the notification period. The submission was primarily in regards to the impact on the access lane which services 29 Bakers Road through to 39 Bakers Road. The concerns raised can be reasonably satisfied through the provision of a construction management plan, which has been conditioned to be provided prior to the issue of the construction certificate.

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for the construction of a secondary dwelling within the rear yard. The proposal also includes the removal several trees onsite.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

SITE DESCRIPTION

Property Description:	Lot 1 DP 206824 , 29 Bakers Road CHURCH POINT NSW 2105
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Bakers Road. The site is irregular in shape with a frontage of 30.39m along Bakers Road and a depth of 64.45m. The site has a surveyed area of 1359m² with a slope of 36.1% falling from the south-west to the north-east.

	The site is located within the E4 Environmental Living zone and accommodates an existing one to two residential dwelling house. The rear of the site is heavily vegetated with native canopy trees and low-lying plants. <u>Detailed Description of Adjoining/Surrounding Development</u> Adjoining and surrounding development is characterised by by similar one to two storey residential dwelling houses on heavily vegetated sites.

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:

- <u>Tree Removal Application - T0379/16</u>
  Removal of four trees onsite. Determined13/12/2016
- <u>Development Application - N0194/07</u>
  Construction of a new carport, garage and driveway. Determined 14/11/2007

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 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)	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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an Arborist Report for the proposed trees to be removed and a Landscape Plan detailing proposed planting. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 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. 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. 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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment	(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.

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

EXISTING USE RIGHTS

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 27/08/2020 to 10/09/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Peter John McKenzie	31 Bakers Road CHURCH POINT NSW 2105
Mrs Halina McKenzie	31 Bakers Road CHURCH POINT NSW 2105

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

- **Physical impact on access easement and potential blocking of easement through the construction of the proposal**

  Comment
  The laneway access to 29 Bakers Road through to 39 Bakers Road is particularly narrow with construction works or vehicles potentially obstructing access. To ensure that construction is appropriately managed onsite and access is maintained to adjoining and surrounding properties a Construction Management Plan is to be prepared prior to the issue of the construction

certificate.

- **Consistencies with the provisions of State Environmental Planning policy [Affordable Rental Housing] 2009.**

  Comment
  Within SEPP(affordable housing) the E4 Environmental Living zone is not identified as an applicable zone and therefore, works cannot be carried out within the E4 zone under this state policy. In accordance with PLEP 2014 secondary dwellings are permitted with consent within E4 Environmental Living zones. As such, the application is assessed in accordance with the relevant PLEP and P21 DCP controls for secondary dwellings.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Additional Information Comment 17/03/2021 The Arborist's Report and landscape plan provided with the additional information are noted. The Arborist's report confirms that 12 trees are to be removed to accommodate the proposed works. Of these, 6 are local native species as follows: T6 *Allocasuarina littoralis* 9m height T7 *Glochidion ferdinandii* 6m ht T8 **2 x** *Glochidion ferdinandii* 6m ht T12 *Allocasuarina littoralis* 8m ht T14 *Eucalyptus punctata* 13m ht. The report indicates that T6 (as well as 2 other small *G. ferdinandii*) are to be removed to accommodate stairs and paths. The original plans don't indicate location of stairs and path adjacent to the trees, however the recently submitted Landscape plan indicates the stairs. The landscape plan provided indicates planting of exotic and exempt species, which is not considered appropriate for a site located in the E4 - Environmental Living Zone and mapped as remnant Pittwater Spotted Gum Forest. The proposal appears to provide little by way of addressing the local planning controls relating to the sensitive environmental and scenic values of the site and locality. There is sufficient room on the site to accommodate replacement tree planting for the tree canopy to be removed. If the proposal is to be supported conditions have been provided requiring replanting of trees and use of local native species.

Internal Referral Body	Comments
	<u>Original Comment</u> The plans indicate removal of seven trees to accommodate the proposed works. It is considered that insufficient information has been provided to enable assessment of the proposal. Two old Arborist's report were noted to have been provided, however a current report specifically addressing impacts of this proposal is requited to identify impacts of the proposal. An Arborist's Report prepared by a qualified Arborist minimum qualification AQF Level 5 is required to identify trees impacted by the works. It is also evident that there will need to some pathway to access the secondary dwelling, The plans indicate stairs on the north western side of the building, but no linking paths. Such works have the potential to impact other trees on the site and need to be identified on the plans. No landscape plan was sighted with the application indicating proposed replanting and revegetation following works to stabilise the site and provide environmental amenity. At this stage the proposal is not supported with regard to landscape issues due to lack of information to enable proposer assessment. Should additional information be provided, further assessment can be undertaken.
NECC (Bushland and Biodiversity)	**Biodiversity Referral (28 April 2021)** The Biodiversity referrals team have reviewed the following additional information: • Landscape Plan (Apex Studio Landscape Architecture & Urban Design, 19 January 2021) • Arborist Report (Canopy Consulting, 12 December 2020) • Tree Works Consent – 29 Bakers Road, Church Point (Northern Beaches Council, 12 December 2016) • Tree Assessment Report (Perfect Outdoors, 16 November 2016) • Tree Works Application (D Souza, 26 August 2016) This additional information indicates that the proposal will result in the removal of six protected native trees including Tree 13 which is a locally native Grey Gum (*Eucalyptus punctata*) of high retention value. However, it is advised that this tree was previously approved for removal through a 2016 Council Tree Permit. In order to achieve consistency with PDCP Clause B4.7, locally native trees approved for removal must be replaced with appropriate

Internal Referral Body	Comments
	compensatory plantings. The Landscape Plan should also be amended to include at least 80% species of the Pittwater Spotted Gum Forest Endangered Ecological Community (EEC). These amendments will be conditioned. **Biodiversity Referral (13 October 2020)** There is insufficient information to assess the proposal at this time. The following biodiversity controls apply to the subject site: • NSW Biodiversity Conservation Act 2016 (BC Act) • Pittwater LEP Clause 7.6 (Biodiversity Protection) • Pittwater DCP Clause B4.7 (Pittwater Spotted Gum Forest Endangered Ecological Community) The majority of the subject site is identified as Pittwater Spotted Gum Forest Endangered Ecological Community (EEC) under the NSW Department of Planning, Industry and Environment's 'Native Vegetation of the Sydney Metropolitan Area' (2016) mapping. The proposal will require the removal of at least seven trees within the footprint of the development area. In accordance with PDCP controls, any proposal which may require removal of or impact upon the Tree Protection Zones of protected trees requires an arboricultural impact report and tree protection plan. Furthermore, should the trees proposed for removal constitute diagnostic species of the Pittwater Spotted Gum Forest EEC (particularly eucalypt species), further assessment under the NSW BC Act is likely to be required. This would require an ecological impact assessment - including a 'test of significance' for the Pittwater Spotted Gum Forest EEC - prepared by a suitably qualified ecologist. It should also be noted that removal of seven protected trees without provisions for replacement planting is inconsistent with the technical requirement of B4.7 which aims for 'no net loss of native canopy trees'. It is recommended that the applicant consider measures to demonstrate that the proposal has been designed to maximise retention of significant native trees, as a proposal which is inconsistent with applicable biodiversity controls is unlikely to be supported by the Biodiversity referral body.
NECC (Development Engineering)	The submitted Geotechnical report certifies that an acceptable risk is achievable for the development. No objection to approval, subject to 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

External Referral Body	Comments
	relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1106503S, dated 12/06/2020). The BASIX Certificate indicates that the development will achieve the following:

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

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

SEPP (Infrastructure) 2007

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).

- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	5.5m	6.7m	21.8%	**No**

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	5.5m

Proposed:	6.7m
Percentage variation to requirement:	21.8%

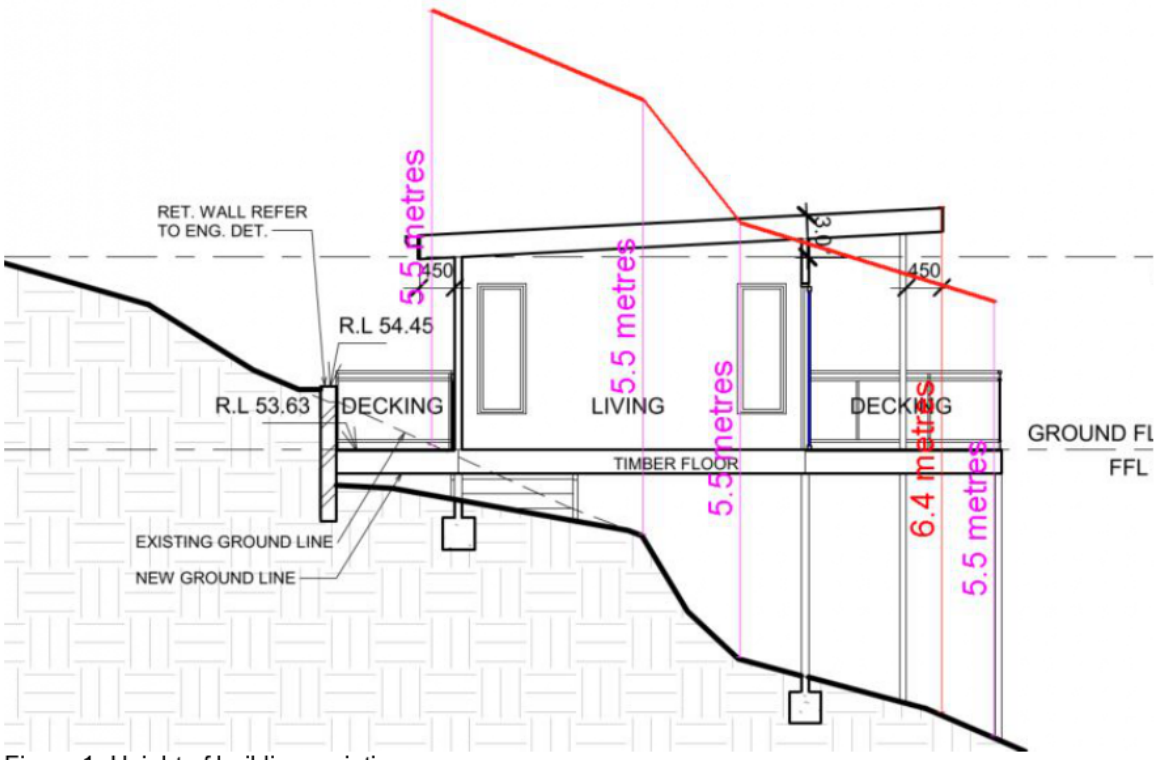


Figure 1: Height of building variation

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 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 site slopes towards the street and the adjoining properties are higher. As a result, there are no adverse amenity impacts such as overshadowing or view loss.
- The location of the secondary dwelling is the most appropriate area within the site as it would require greater excavation if it is moved to comply with the height limit.
- The proposed sitting has been carefully considered to ensure that all significant landscape elements are retained and remain visually prominent.
- Strict compliance with the height control will inevitably lead to a reduction in a ceiling height and this, in turn, will not comply with the Australian Standards.

It is agreed that the proposal does not result in unreasonable amenity impacts to adjoining residents. The slope of the site does contribute to the minimisation of the amenity impacts. The positioning of the proposed secondary dwelling does minimise the extent of excavation required which due to the slope of the site could be excessive if sited in an alternative location.

It is agreed that the proposal minimises impact to significant landscape elements onsite including large natural bushrock and native vegetation. The proposal maintains floor to ceiling heights of 2.4m which is the minimum requirement in accordance with the BCA. It is agreed that a reduction of the roof height would result in a development that does not comply with the BCA.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

> *a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
>
> Comment
> Despite the variation to the height of building control, the proposed secondary dwelling is considered to be in keeping with the desired future character of the locality. The design, colour schedule and external material
> finishes are sympathetic to a low density residential site positioned within a landscaped setting.
>
> *b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
>
> Comment
> The surrounding and nearby development consists of two and three storey dwelling houses located on steep and vegetated sites. The proposed single storey secondary dwelling is therefore considered compatible with regard to the surrounding buildings with regard to height and scale.
>
> *c) to minimise any overshadowing of neighbouring properties,*
>
> Comment
> The proposal does not present an unreasonable overshadowing impact to the adjoining properties due to the orientation of the site and location of adjoining Private Open Space and Windows.
>
> *d) to allow for the reasonable sharing of views,*
>
> Comment

The proposal achieves a reasonable level of view sharing. The adjoining property to the rear would have the most vulnerable views however, due to the slope of the site views from 31 Bakers Road to Pittwater Waterway remain unobstructed. The adjoining properties to the side do not gain views across the proposed location of the secondary dwelling.

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

Comment
The proposal is designed to retain the natural bushrock and majority of significant vegetation onsite. There are two bushrock protrusions which are situated below the elevated portion of the secondary dwelling. Siting the secondary dwelling in this way will not only ensure that the bushrock is retained but also a feature of the proposal.

The rear of the site is heavily vegetated which will remain predominately untouched as part of this proposal. It is noted that a landscape plan accompanied the application however, the plan indicated a variety of non-native species. A condition of consent has been imposed to provide substantial native replacement planting.

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

Comment
The proposal complies with the relevant setback, building envelope, and landscaping requirements ensuring that the visual impact of the development is minimised. Additionally the proposed colours and materials are dark and earthy tones or natural finishes which are sympathetic to the surrounding natural environment. The site is not identified as a heritage item nor located within the vicinity of a heritage item.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of Clause 4.3 Height of buildings.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

  Comment
  The secondary dwelling has been positioned in a way that retains significant canopy trees and minimises visual impact from Baker Road being located behind the principal. The secondary dwelling is a permissible form of development which comprises of two bedrooms, provided additional housing choice within a low density residential setting.

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

  Comment
  The proposed secondary dwelling has been considered against controls contained within the Pittwater LEP, in particular clause 7.6 Biodiversity. The proposal has been reviewed by Council's Biodiversity officer and found to be designed and sited in a way that avoids significant adverse impacts to natural environment, including vegetation.

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

  Comment
  The scale of the building is not inconsistent with the surrounding development which consists of two and three storey dwelling houses. The projection of the roof form over the 5.5m maximum height requirement is in character for the area and does not result in a building that is considered excessive by virtue of its height and scale.

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

  Comment
  There will remain sufficient area within the site to accommodated new landscape plantings. Extensive replacement planting of native vegetation and canopy trees has been conditioned as part of this proposal. The proposal will not have a detrimental impact to wildlife corridors.

Conclusion:

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

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Front building line	6.5m	27m	Yes
Rear building line	6.5m	19m	Yes
Side building line	2.5m (north-west)	5.3m	Yes
	1m (south-east)	2m	Yes
Building envelope	3.5m (north-west)	Within envelope	Yes
	3.5m (south-east)	Within envelope	Yes
Landscaped area	60%	68.6%	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	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
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes
D4.6 Side and rear building line	Yes	Yes
D4.8 Building envelope	Yes	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

One additional off-street parking space has not been provided for the secondary dwelling which does not comply with the requirement for a total of three spaces to be provided on site. With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *An adequate number of parking and service spaces that meets the demands generated by the development.*

  Comment
  The proposal maintains two off street parking spaces onsite. The site is located within a residential area where on-street parking available for the future residents of the secondary dwelling. Sufficient off street parking space has been provided that will meet the demand generated by the development.

- *Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety. Safe and convenient parking.*

  Comment
  To facilitate an additional parking space a substantial increase in hardsurfaced area and excavation would be required as well as removal of significant trees. The proposal provides for safe and convenient parking arrangement which will not have a detrimental effect upon pedestrian and vehicle safety.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of $2,047 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $204,670.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

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

The proposal does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the PLEP 2014 and P21 DCP. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Therefore, the application is recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

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

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

Accordingly Council as the consent authority grant Development Consent to DA2020/0932 for Construction of a secondary dwelling on land at Lot 1 DP 206824, 29 Bakers Road, CHURCH POINT, 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 and Roof Plan	14/02/2020	RK Designs
Ground Floor Plan	14/02/2020	RK Designs
Elevations and Sections	14/02/2020	RK Designs
External Colours and Finishes	01/06/2020	RK Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Report - Ref. AG 20204	14/08/2020	Ascent Geotechnical Consulting
Arborist Report - Ref. Q1241	12/12/2020	Canopy 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 - LA01 and LA02	19/01/2021	AZ

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	18/05/2020	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.

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of $2,046.70 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 $204,670.00.

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

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council

that the total monetary contribution has been paid.

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Asent geotechnical consulting dated 14th August, 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

7. **Installation of Nest Boxes**
A minimum of three nest boxes are to be installed in retained trees / throughout the trees within areas of retained native vegetation / on the site.

Nest boxes must be attached in accordance with industry best practice (e.g. expandable tree sensitive methods).

Written certification of compliance is to be submitted to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To maintain wildlife habitat approved for removal.

8. **Landscape Plan**
The submitted Landscape Plan must be amended in accordance with the following:
   - Replacement planting of one *Eucalyptus punctata* specimen in a minimum pot size of 200m;
   - Replacement planting of six specimens in a minimum pot size of 200m, selected from the following species: *Glochidion ferdinandii, Allocasaurina littoralis, Elaeocarpus reticulatus* (not a cultivar);
   - A minimum of 80% of overall plants included within the Landscape Plan must be selected from the Pittwater Spotted Gum Forest Endangered Ecological Community.

The amended Landscape Plan must show individual plants, a species schedule and proposed pot sizes. The amended Landscape Plan is to be prepared by a qualified landscape architect and submitted to the Certifying Authority prior to issue of any Construction Certificate.

Reason: To ensure compliance with Pittwater DCP Clause B4.7 (Pittwater Spotted Gum Forest EEC)

9. **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 clause B5.7 PITTWATER DCP21.
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.

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.

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

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

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

11. **Construction Management Program**
A Construction Management Program shall be prepared which includes the following:

a) Details for maintaining access to adjacent properties

b) Proposed method of access to and egress from the site for demolition, excavation and construction vehicles

c) Proposed method of loading and unloading, demolition, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site.

d) Details for storage of materials

e) Provision of parking for workers

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 in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Impacts to Protected Native Wildlife**
Trees proposed for removal are to be inspected for native wildlife prior to removal. If native wildlife is found within trees to be removed, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifying Authority.

Reason: To protect native wildlife.

13. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

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

Reason: Environmental Protection

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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.

b) Tree protection shall be undertaken as follows:

i) tree protection shall be in accordance with the recommendations of the Arboricultural Impact Assessment dated 12 December 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 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.

16. **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.

17. **Trees Condition**
During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

(a) A general decline in health and vigour.

(b) Damaged, crushed or dying roots due to poor pruning techniques.

(c) More than 10% loss or dieback of roots, branches and foliage.

(d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.

(e) Yellowing of foliage or a thinning of the canopy untypical of its species.

(f) An increase in the amount of deadwood not associated with normal growth.

(g) An increase in kino or gum exudation.

(h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.

(i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees.

18. **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

19. **Required Tree Planting**
Trees shall be planted in accordance with the following:

i) 1 *Eucalyptus punctata*, minimum pot size 200mm

ii) 6 local native tree species capable of attaining a minimum height of 10 metres at maturity, minimum pot size 200mm

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.

Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight or where the proposed tree location may impact upon significant views.

Native tree planting species may be selected from Council's list:
www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.

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

Reason: To maintain environmental amenity.

20. **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.

21. **Relocation of Logs and Coarse Woody Debris**
All logs and branches are to be salvaged from trees prior to any vegetation clearing and reused as fauna habitat within areas of retained native vegetation on the site.

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

Reason: To protect wildlife habitat.

22. **Certification of Landscape Plan**
Landscaping is to be implemented in accordance with the amended Landscape Plan prepared submitted to the Certifying Authority prior to Construction Certificate.

Evidence of landscaping being undertaken in accordance with the amended Landscape Plan is to be prepared and certified by a qualified landscape architect, and submitted to Certifying Authority prior to issue of any Occupation Certificate.

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

23. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
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 restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of 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 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 for on-site storm water detention as to user is to be submitted to PCA and Council.

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 disposal system is maintained to an appropriate operational standard.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

25. **Environmental and Priority Weed Control**
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: Preservation of environmental amenity.

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

Reason: To protect wildlife habitat.

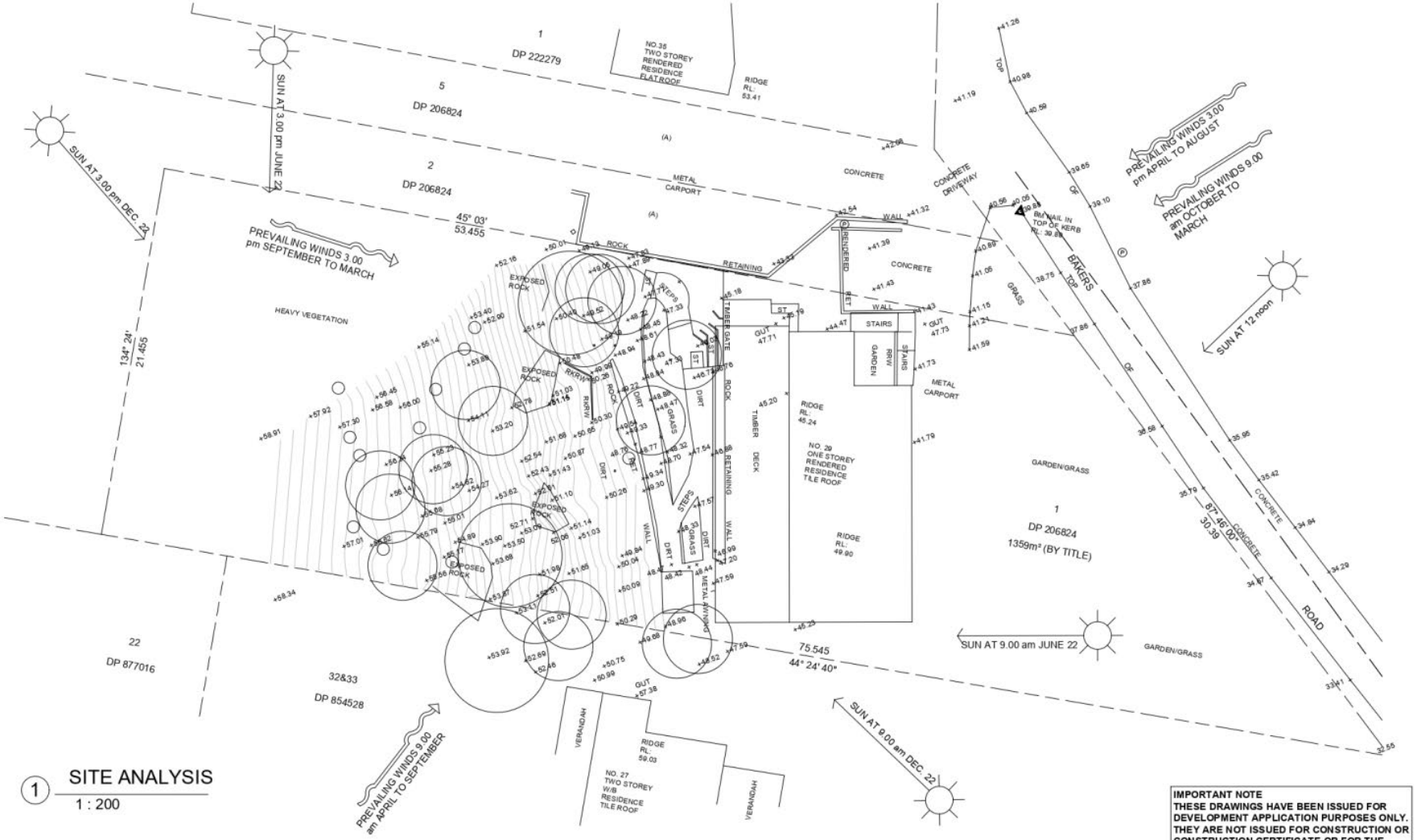
27. **Replacement of Canopy Trees**
Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

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

Reason: Weed management.



1 SITE ANALYSIS
1 : 200

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drawn	date	issue	amendment
EU	16/01/19	A	ISSUE FOR DA

project
PROPOSED CONSTRUCTION OF A GRANNY FLAT AT 29 BAKERS ROAD CHURCH POINT 2105 LOT 1 DP 206824

bdaa ACCREDITED BUILDING DESIGNER

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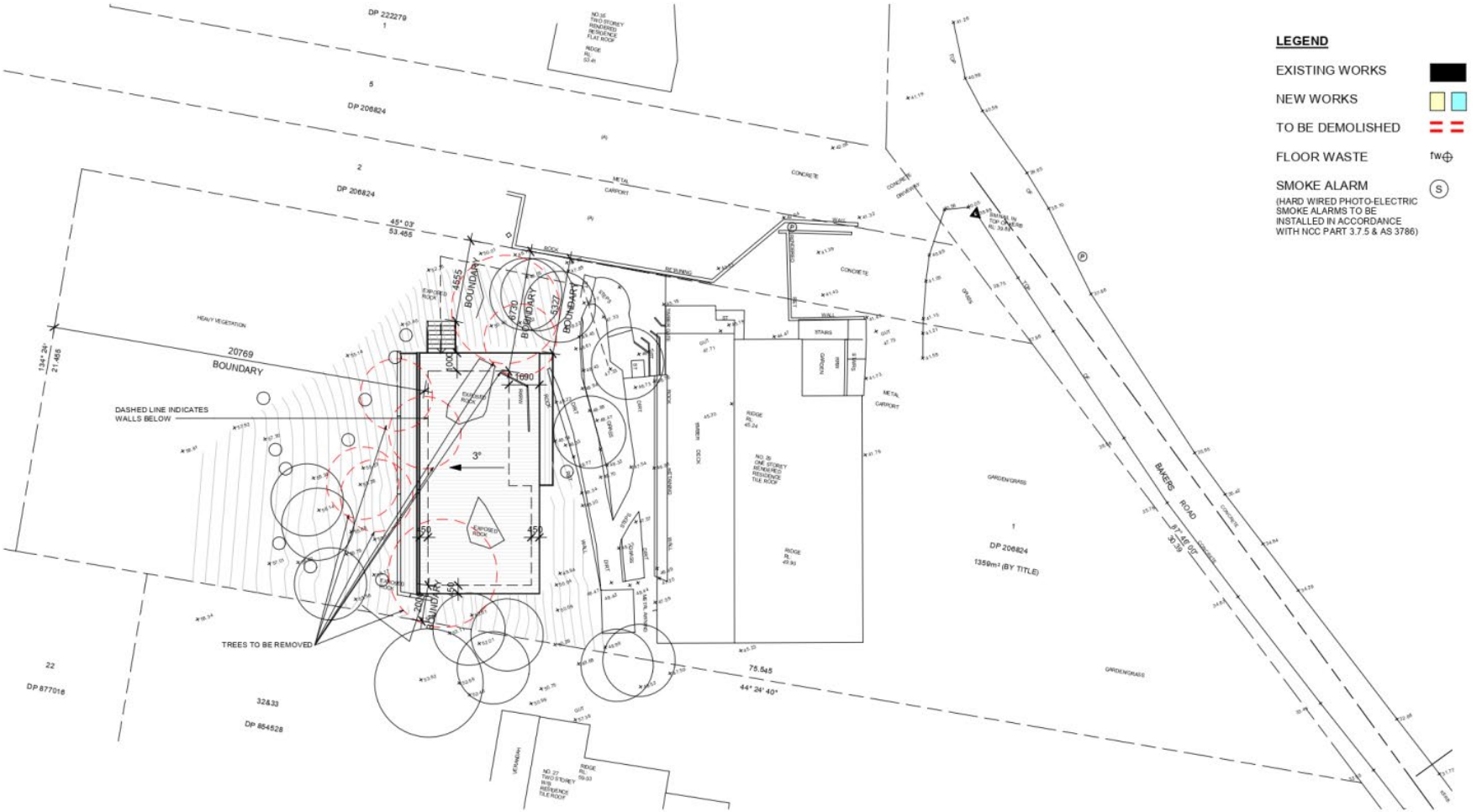
client
CARLOS SOUZA

true north

drawing
SITE ANALYSIS

project no	date	sheet no.	scale @ A3	issue	drawn
20-06	14/02/2020	1 of 1	1 : 200	A	RK

RK DESIGNS



1 SITE AND ROOF PLAN
1 : 200

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drawing
SITE AND ROOF PLAN

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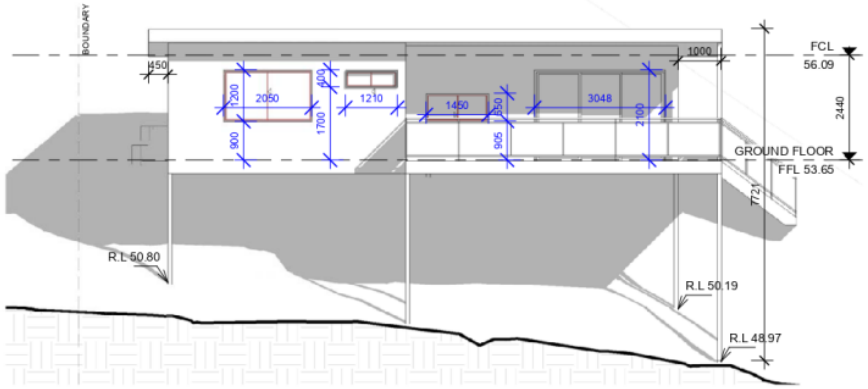
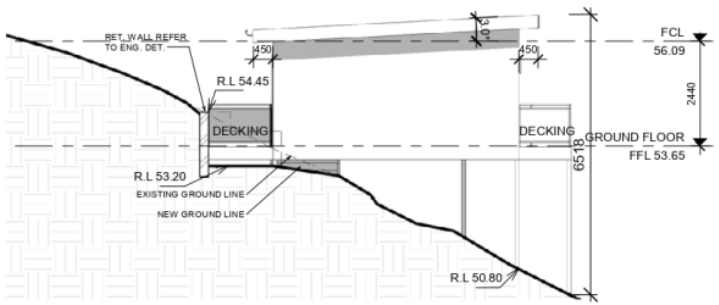
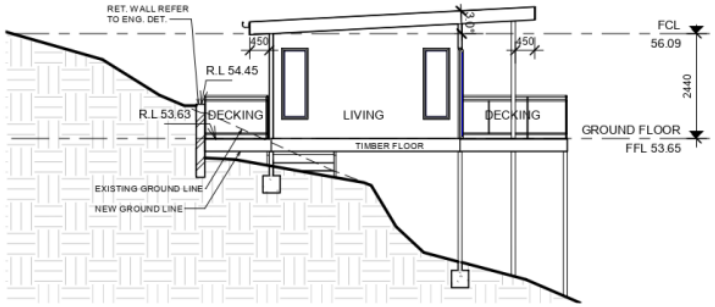


1 NORTH EAST ELEVATION
1 : 100



3 SOUTH EAST ELEVATION
1 : 100



4 SECTION A-A
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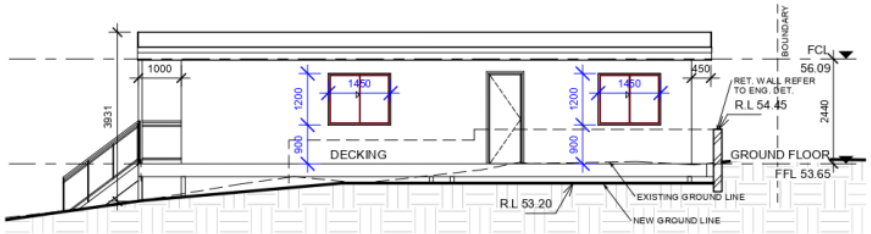

2 SOUTH WEST ELEVATION
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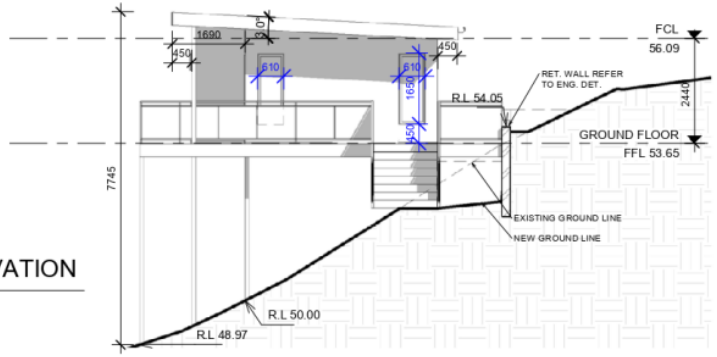

5 NORTH WEST ELEVATION
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Bungalow Homes

true north

drawing
ELEVATIONS & SECTION

project no	date	sheet no.	scale @ A3	issue	drawn
20-06	14/02/2020	3	1 : 100	A	RK

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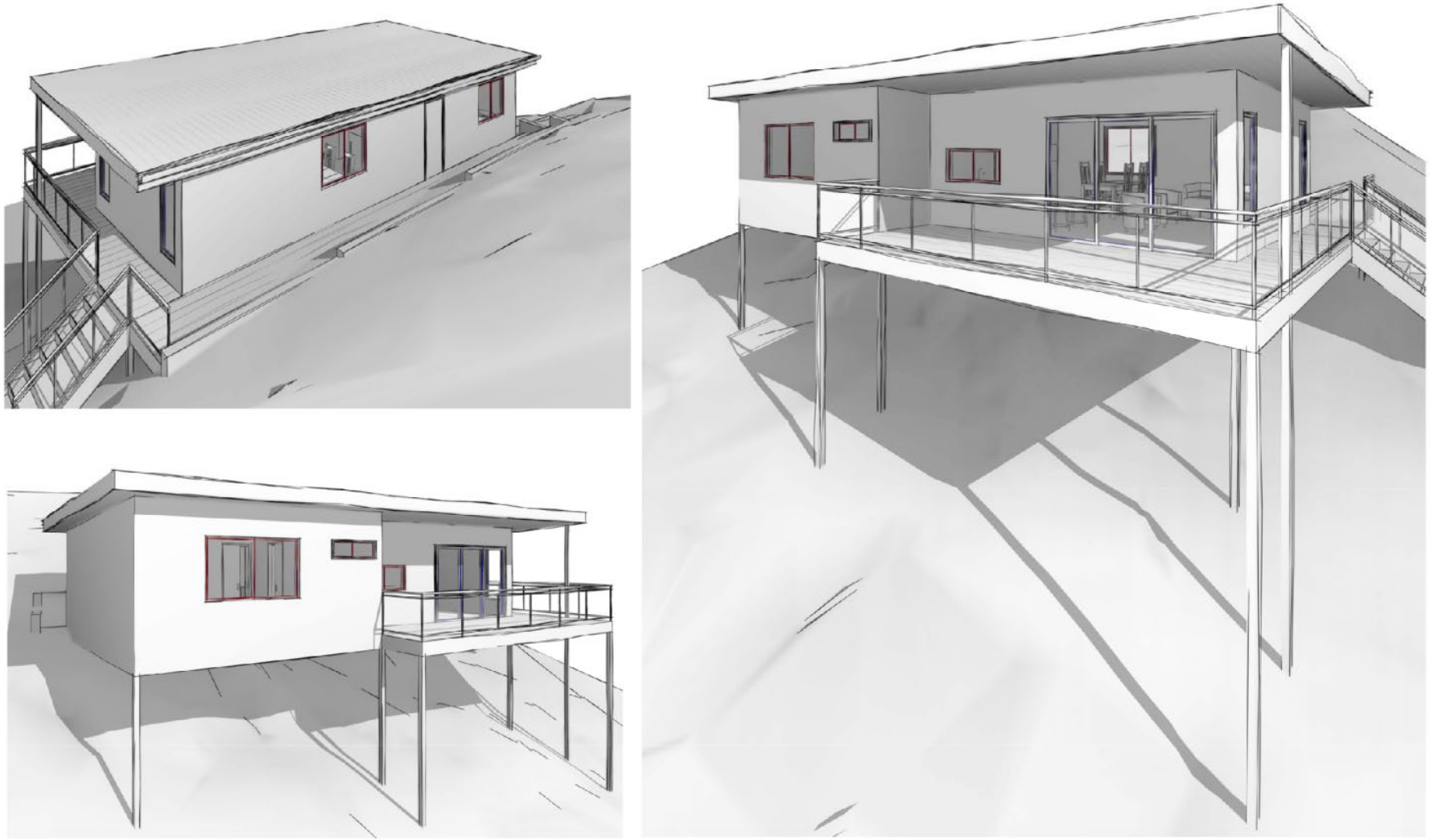

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drawing
3D VIEWS

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20-06	14/02/2020	0		A	RK

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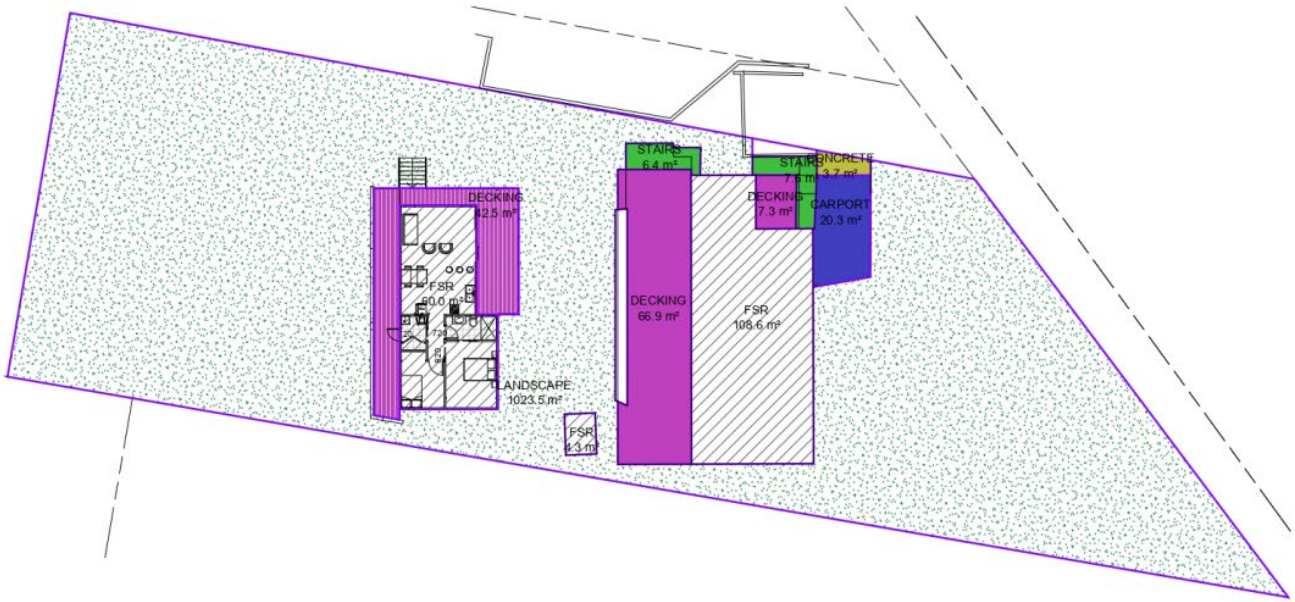

REQUIRED LANDSCAPING = 60% OF SITE AREA = 815.4sqm
(MINIMUM LANDSCCAPE DIMENSION NOT LESS THAN 1 m)

PROPOSED LANDSCAPED AREA = 1,023.5 sqm
PROPOSED LANDSCAPED AREA AS % OF SITE AREA = 75.3%

THEREFORE, THE PROPOSAL COMPLIES WITH THE REQUIREMENTS OF THE DCP.

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drawing
AREA CALCULATIONS

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20-06	14/02/2020	4	1 : 250	A	RK

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CLAUSE 4.6 VARIATIONS

PROJECT
PROPOSED CONSTRUCTION OF A SECONDARY DWELLING

PROPERTY
29 BAKERS ROAD
CHURCH POINT

CLIENT
CARLOS SOUZA

JOB NO 20-06

DATED 4 May 2021

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REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS UNDER CLAUSE 4.6 PITTWATER COUNCIL LEP 2014

APPLICANT NAME: Carlos Souza
PROPERTY ADDRESS: 29 Bakers Road, Church Point
PROPOSED DEVELOPMENT: A secondary Dwelling
DATE: 06 August 2020
DEVELOPEMNT STANDARD: Clause 4.3 of PLEP 2014 Height of Building

We are seeking approval to vary Clause 4.3 Height of Buildings development standard of Pittwater Council Local Environmental Plan 2014.

HEIGHT OF BUILDINGS

As per Clause 4.3(2FA), the maximum height for a secondary dwelling or a rural worker's dwelling in Zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling.

OBJECTIVES OF CLAUSE 4.3 HEIGH OF BUILDINGS ARE TO

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
(c) to minimise any overshadowing of neighbouring properties,
(d) to allow for the reasonable sharing of views,
(e) to encourage buildings that are designed to respond sensitively to the natural topography,
(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The dictionary to the LEP defines building height to mean:

(a) In relation to the height of a building in metres – the vertical distance from ground level (existing) to the highest point of the building,

(b) In relation to the RL of a building – the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

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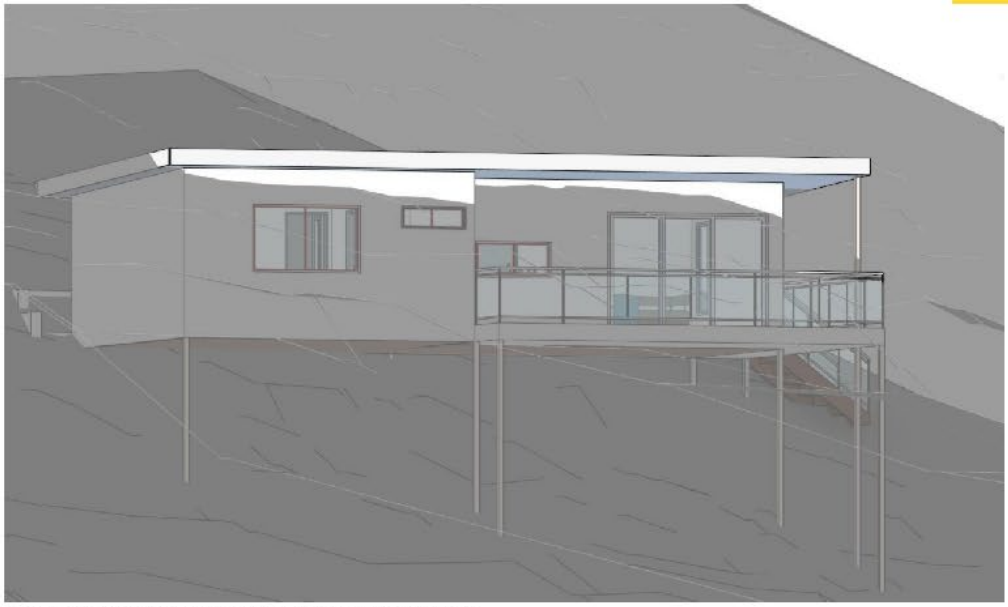

Figure 1. 5.5 metres height plane on 3D Model

Figure 2. 5.5 metres height plan on 3D Model

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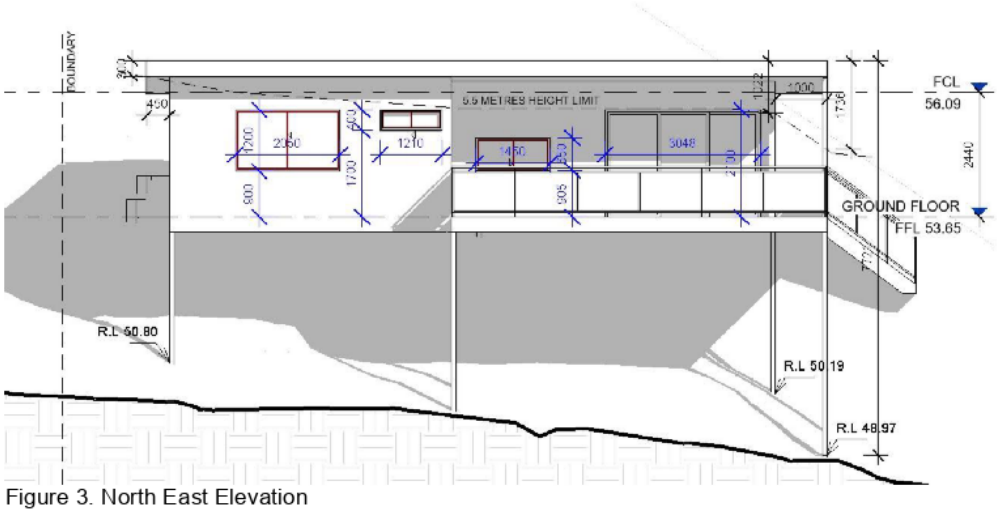

Figure 3. North East Elevation

From an analysis of the architectural plans and available survey information, and as indicated on the 3D height plane at Figure 1 and 2 over the page, we confirm that the development results in a building height breach of maximum of 300mm along the South East corner of the roof form and maximum of 1022mm of the building form and 1736mm of the roof form along the North West corner. This presents maximum non-compliance of between 300mm (5.4%) and 1736mm (31.5%).

The height of the development is contextually appropriate and will not be perceived as inappropriate or jarring in its context.

It has been determined that the majority of the development sits comfortably below the 5.5 metres height standard with the exception of the North East edge of the roof form. The maximum building height in this location is 7.7metres representing a non-compliance of 1736mm or 31.5%. The balance of the development sits well below the maximum prescribed building height by up to 2.5 metres.

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CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Clause 4.6 of PLEP provides:

(1) The objectives of this clause are as follows—
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in a particular circumstances.

Pursuant to clause 4.6(2) consent may, subject to this clause be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.3 Height of Buildings Development Standard. Clause 4.6(3) states 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 demonstration:

(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) States 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
(c) the concurrence of the Planning Secretary has been obtained

Clause 4.6(5) states that in deciding whether to grant concurrence, the Planning Secretary must consider—
(a) whether a contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

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HEIGHT OF BUILDINGS STANDARD AND OBJECTIVES

This standard and the associated objectives, have been previously identified. Having regards to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

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

Comment: In the context of the steep topography of the site (gradient of 25%) the extent of noncompliance is appropriately described as minor. The height, bulk and scale of the development is entirely consistent with the built form characteristics established by the adjoining properties at 27 and 31 Baker Road, Church Point.

We have formed the considered opinion that the building height and roof form proposed are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality noting that required excavation is significantly less than propose a height complying development. It will help to retain the existing landscape and trees on site. Informing such opinion, we rely on the photomontage in figure 4 and 5 below.

Figure 4. 31 Baker Road, Church Point

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Figure 5. Existing building, 29 Baker Road, Church Point and 27 Baker Road, Church Point

The proposal is in consistent with this objective.
(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment: The breaching elements do not in any quantitative or qualitative manner contribute to unacceptable bulk and scale with the overall height of the development, and associated extent of height noncompliance.

The proposal is consistent with this objective.
(c) to minimise any overshadowing of neighbouring properties,

Comment: As the existing topography is steep and the adjoining property 27 Baker Road, Church Point is higher than the proposed secondary dwellings, the overall bulk and scale of the proposed secondary dwelling will appropriately maintain the neighbour's amenity and will not see any unreasonable loss of solar access for the subject site and neighbouring properties.

The proposal is consistent with this objective.
(d) to allow for the reasonable sharing of views,

Comment: Views of the site are along the North East elevations. The proposed secondary dwelling is positioned behind the adjoining properties, avoiding unreasonably altering views from the adjoining properties.

The proposal is consistent with this objective.
(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment: The site falls towards the street, which presents a challenge to a compliant roof height for the development, 300mm up to 1732mm.
To comply with the height, sufficient amount of excavation is inevitable that will affect natural topography.

The proposal is consistent with this objective.
(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment: The development will not have any direct or adverse impacts on any heritage items of the conservation areas and heritage items.
Further, the joist and pier floor system will lessen the impact on the natural environment than a large amount of the excavation to comply with the height.

Furthermore, clause 4.6(3)(b) of PLEP requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard.
There are a number of environmental planning grounds that support a variation to the maximum building height control in this instance to secure a better outcome for and from the development.
In the context of the steep topography, the impacts are appropriately described as minors especially when the site slopes towards the street and the adjoining properties are higher. As a result, there are no adverse amenity impacts such as overshadowing or view loss associated with the proposed variation to the height of buildings control, when considering the site context. The proposed sitting of all new built form on the site has been carefully considered to ensure that all significant landscape elements are retained and remain visually prominent.

Besides, the location of the secondary dwelling is the most appropriate area within the site as it would require more amount of excavation if it is moved just to comply with the height limit.

Also, strict compliance with the height control will inevitably lead to a reduction in a ceiling height and this, in turn, will not comply with the Australian Standards and it is not a desirable outcome for the development since it would decrease the amenity of the development.

It is considered that these environmental planning grounds are particular to the circumstances of the site and support the proposed variation to the maximum building height standard. The proposal promotes good design and amenity and as such there is no planning purpose in strictly upholding the development standard. It is a better planning outcome to permit a variation to Clause 4.3 in this instance. It is considered that enforcing compliance will lead to an environmental planning outcome that is suboptimal when compared with the environmental planning outcome that would be secured by the adoption of the applicant's proposal.

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CONCLUSION

The non-compliance with 5.5 m height plane is attributed to existing floor levels, and though strict compliance could be achieved by introducing a sufficient excavation, we feel this is unreasonable when the existing roof is non-compliant, and the non-compliance is by a similar amount of 1022mm for the building and 1732mm for the roof edge. We have also minimized this non-compliance by limiting floor to ceiling heights to the minimum 2.44m. We also feel that strict compliance is unnecessary as the proposed works comply with all the objectives of this height control and will have no impact on the amenity of surrounding neighbours in terms of view less, privacy or increased overshadowing. It is our opinion that there are sufficient environmental planning grounds to justify contravening the development standard and compliance with this standard is unreasonable and unnecessary, and as such, we request a variation to the standard.

ITEM 3.2	**REV2021/0007 - 37 HEADLAND ROAD, NORTH CURL CURL - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE**
REPORTING MANAGER	**Lashta Haidari**
TRIM FILE REF	**2021/317536**
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 REV2021/0007 for demolition works and Construction of a dwelling house on land at Lot 99 DP 6143, 37 Headland Road, North Curl Curl, subject to the conditions outlined in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0007

Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 99 DP 6143, 37 Headland Road NORTH CURL CURL NSW 2099
Proposed Development:	Demolition works and Construction of a dwelling house
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:	Edward David Fong Stephanie Wong
Applicant:	Edward David Fong

Application Lodged:	23/02/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	04/03/2021 to 18/03/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 0.00

EXECUTIVE SUMMARY

The application seeks a review of the determination of DA2020/1087, for the demolition of existing structures and construction of a dwelling house, which was refused by Northern Beaches Council on 10 December 2020.

The application was refused due to the non-compliance with the Warringah Development Control Plan in relation to side boundary envelope and view loss.

In response to the Development Applications refusal, the applicant has submitted an amended design, which includes a redesign and lowering of the roof form and the lowering of the ground and first floor

levels of the rear portion of the proposed dwelling.

The notification of the review application resulted in one (1) submission objecting to the development in relation to view loss.

Subject to compliance with recommended conditions to mitigate privacy impacts and delete a portion of the rear first floor balcony roof, the proposed amendments made under this review application are considered sufficient to satisfactorily address the issues identified in the original assessment report and reasons for refusal.

Accordingly, the application is referred to the Northern Beaches Development Determination Panel with a recommendation for approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks a review of the refusal of DA2020/1087, for the demolition of existing structures and construction of a dwelling house.

The application was refused for the following reasons:

1. The proposed development is inconsistent with the requirements and objectives of clause B3 (Side Boundary Envelope) of WDCP 2011. The areas of non-compliance directly attribute to unreasonable impacts upon the amenity of nearby dwellings and result in a dominance of built form as seen from properties upslope of the site. Further, the non compliances occur where the development is elevated above existing ground levels, inconsistent with the topography of the site.

2. The proposed development will result in unreasonable impacts upon views currently enjoyed from 30 Headland Road and 32 Headland Road, inconsistent with the requirements and objectives of clause D7 (Views) of WDCP 2011. The impacts can be directly attributed to noncompliance with built form controls, and a more skilful design solution could be employed to reduce impacts upon the significant and iconic views.

The application is accompanied with amended plans. The amendments to the design include the following:

- A redesign and lowering of the roof (roof now slopes down from east to west, lower pitch and lower height)
- A lowering of the ground and first floor levels of the rear portion of the proposed dwelling resulting in:
    - Rear portion of first floor lowered by approximately 400mm
    - Rear portion of ground floor lowered by approximately 356mm
    - Rear portion of roof lowered by 650mm

Section 8.3(3) of the EP&A Act, 1979 provides that the applicant may amend the proposal, however the consent authority must be satisfied that the amended proposal remains substantially the same as that considered in the original development application.

Council is satisfied that the amended proposal is substantially the same, and as such the application is referred to the Development Determination Panel for determination.

The resulting development comprises of the demolition of the existing dwelling, swimming pool and garage and the construction of a new two-storey dwelling house comprising of:

Ground floor:

- Double garage, three bedrooms, two bathrooms, study, laundry, gym, living room and rear alfresco area

First floor level:

- Master bedroom with ensuite and WIR, powder room, open plan kitchen/living/dining, butler's pantry, rear balcony

Basement:

- Storage and plant

External works:

- Landscaping works
- Retaining wall
- New driveway crossing

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

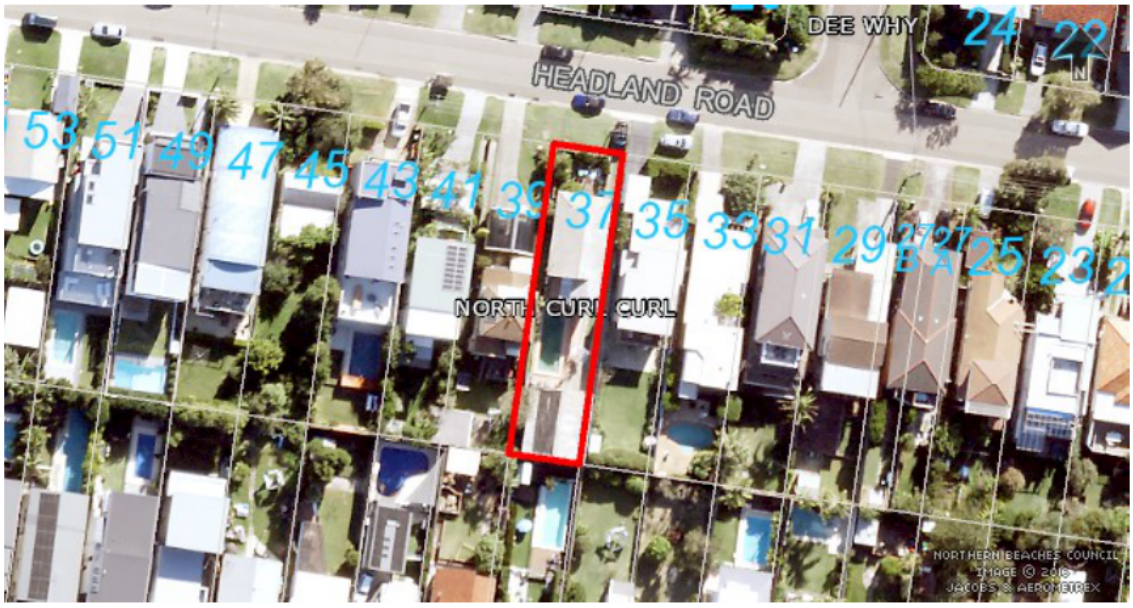
Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D10 Building Colours and Materials

SITE DESCRIPTION

Property Description:	Lot 99 DP 6143 , 37 Headland Road NORTH CURL CURL NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Headland Road. The site is regular in shape with a frontage of 10.06m along Headland Road and a depth of 45.265m. The site has a surveyed area of 455.3m². The site is located within the R2 Low Density Residential zone and accommodates a part single, part two storey dwelling located centrally on the site, with a detached garage and swimming pool at the rear of the property.. The site has a crossfall of approximately 3.1m from the north (street frontage) to the south (rear) . The site does not contain any significant trees or landscape features. **Detailed Description of Adjoining/Surrounding Development** The site is surrounded by low density residential dwellings, of varying age, architectural style and character.

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:

On 11 June 2020, a prelodgement meeting was held with respect to the proposed development.

On 10 December 2020, DA2020/1087 was refused by Council for the following reasons:

1. The proposed development is inconsistent with the requirements and objectives of clause B3 (Side Boundary Envelope) of WDCP 2011. The areas of non-compliance directly attribute to unreasonable impacts upon the amenity of nearby dwellings and result in a dominance of built form as seen from properties upslope of the site. Further, the non-compliances occur where the development is elevated above existing ground levels, inconsistent with the topography of the site.

2. The proposed development will result in unreasonable impacts upon views currently enjoyed from 30 Headland Road and 32 Headland Road, inconsistent with the requirements and objectives of clause D7 (Views) of WDCP 2011. The impacts can be directly attributed to noncompliance with built form controls, and a more skilful design solution could be employed to reduce impacts upon the significant and iconic views.

Subsequently, the current application was lodged with Council on the 09 February 2021, with an amended design to seek a review of the original determination.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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)	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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to updated plans and reports. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 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. 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. 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.
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	(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. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

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

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 10/12/2020 and the notice of determination was issued on 10/12/2020. The review was lodged on 09/02/2021 and is to be considered by Development Determination Panel on 12 May 2021, which is within 6 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 04/03/2021 to 18/03/2021 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 1 submission/s from:

Name:	Address:
Ms Deborah Cho	32 Headland Road NORTH CURL CURL NSW 2099

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

- **View loss**
  Comment:
  A submission has been received from the property owner of No.32 Headland Road raising concerns with regard to view loss . This matter has been addressed within clause D7 of WDCP 2011 of this report. In summary, subject to recommended conditions to delete a portion of the rear first floor balcony roof, the proposed development is considered to result an acceptable impact to views and meet the view sharing principles of *Tenacity Consulting vs Warringah Council [2004] NSWLEC 140.*

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal for a new dwelling under this review application is assessed by a alternate Landscape Officer to DA2020/1087. The plans indicate that no significant landscape features are affected by the proposed works, and no existing trees nor vegetation within the site is impacted. A Landscape Plan is provided and subject to relocating the front setback proposed tree to the other side of the driveway, and the planting of a native canopy tree within the rear to soften the built form, over and above the works indicated on the Landscape Plan, the proposal is satisfactory. No Landscape Referral objections are raised subject to conditions.
NECC (Coast and Catchments)	The proposal is supported without conditions. The subject land has been included on the 'Coastal Environment Area' map but has not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13 and 15 of the CM SEPP apply for this DA. As assessed in the submitted Statement of Environmental Effects (SEE) report the DA satisfies the requirements under clauses 13 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.
NECC (Development	The proposed amendments to the floor levels of the proposed

Internal Referral Body	Comments
Engineering)	dwelling impact upon the previous on-site stormwater detention (OSD) tank design which will affect the access to the tank and water levels in the tank. The stormwater management plans must be amended to suit the revised design and be submitted for assessment prior to approval. Development Engineers cannot support the application due to insufficient information to address Clause C4 of Warringah DCP. **Amended plans received 9/4/2021** The amended stormwater plans are acceptable. No objection to approval, subject to conditions as recommended.
NECC (Water Management)	No objections on the basis of impacts to water quality. Proposed development is an improvement due to significant reduction in impervious surfaces.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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 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.1119982S_02 dated 20

April 2021).

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

Commitment	Required Target	Proposed
Water	40	45
Thermal Comfort	Pass	Pass
Energy	50	50

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 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 increased risk of coastal hazards on the site or other land.

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

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	7.2m	N/A	Yes

Compliance Assessment

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.7m	N/A	Yes
B2 Number of storeys	2	2	N/A	Yes
B3 Side Boundary Envelope	5m (E)	Outside Envelope	N/A	**No**
	5m (W)	Outside Envelope	N/A	**No**
B5 Side Boundary Setbacks	0.9m (E)	0.9m	N/A	Yes
	0.9m (W)	0.9m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	5.0m	1.5m	**No**
B9 Rear Boundary Setbacks	6m	13.3m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (182.12sqm)	37.8% (172.1sqm)	5.5%	**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

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B2 Number of Storeys	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	No	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The control requires that a building must be sited within the building envelope which is determined by projecting planes at 45º from a height of 5.0m above the ground level at the side boundary.

The proposed dwelling encroaches into the side boundary envelope along both the eastern and western elevation elevation to a height of between 0.3m.

The figures below show the location and extent of the non-compliance.

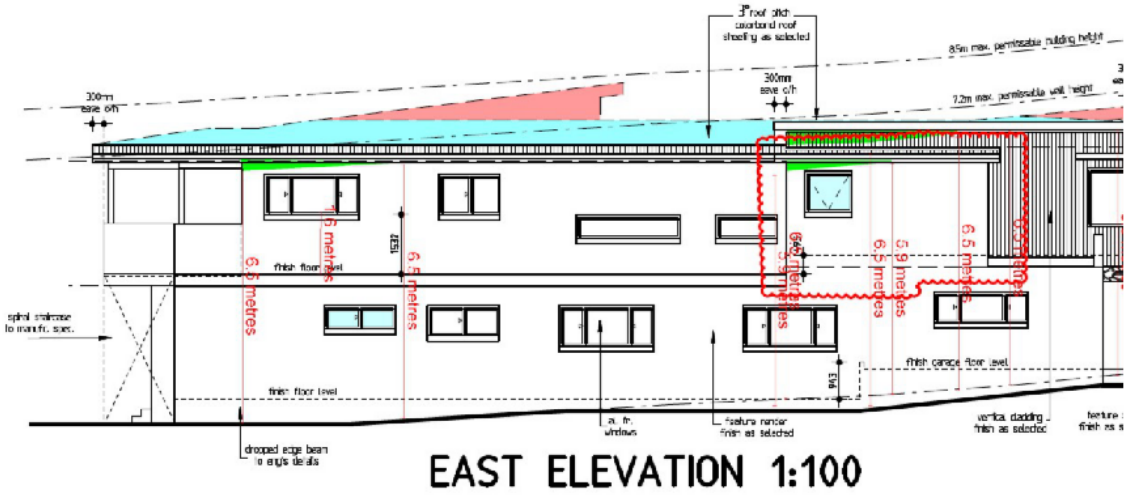


***Figure 1**: Side boundary envelope breach on the eastern elevation shown in green*

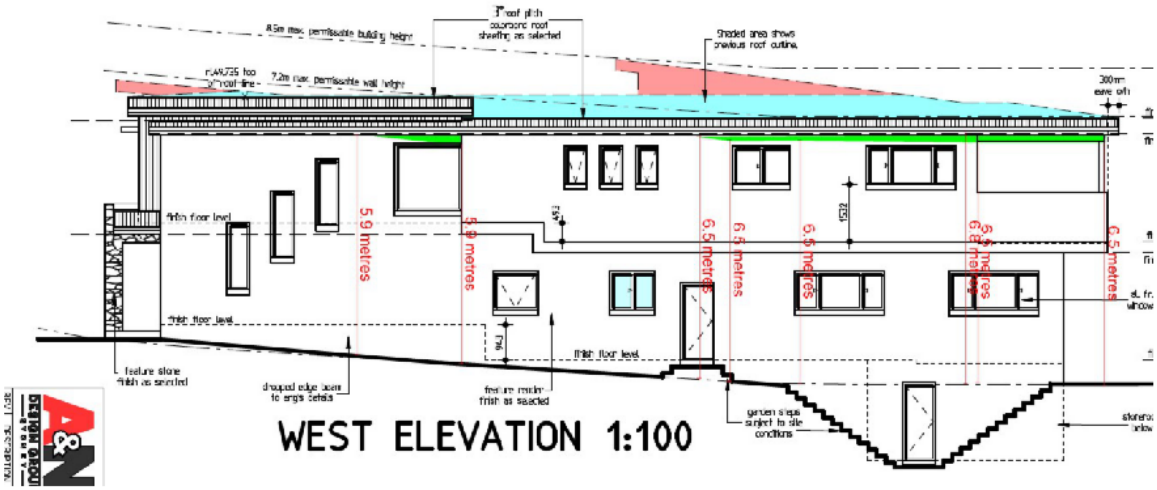


***Figure 2**: Side boundary envelope breach on the western elevation shown in green*

<u>Merit consideration</u>

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:
The apparent size of the proposed development is not inconsistent with the size and scale of more recent development throughout the immediate locality.The proposal would present as a two storey dwelling from the streetscape and would be within the prescribed 8.5m height control. The proposed dwelling would be adequately setback from the front, side are rear boundaries. The dwelling would be appropriately articulated using recessed and modulated first floor walls, balconies, eaves and changes in materials to break up built form.

However, the roof form over the proposed first floor rear balcony would protrude beyond prescribed envelope. This non-compliance is directly attributed to the loss of views, and a dominance of built form as seen from properties on the opposite side of Headland Road. As such a condition is to be imposed to reduce the extent on the first floor balcony roof. This is discussed further in section D7 Views of this report.

Subject to compliance with recommended conditions, the proposal would satisfy this objective.

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

  Comment:
  It is considered that the new dwelling provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. Privacy has been addressed within Section D8 of this report. Subject to recommended conditions, it is considered no unreasonable privacy impacts would occur as a result of the development.

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

  Comment:
  The ground floor of the development has been sited to achieve a suitable driveway gradient, with the first floor set above this level. The revised development incorporates a 943mm step down at ground level and a 493mm step at the first-floor level to fall with the slope of the land. The proposal consists of a low pitched roof to limit any view impacts to the properties west of the site and reduce the overall scale of the building. As above, a condition is to be imposed to reduce the extent on the first floor balcony roof. This open balcony would assist in the appearance of the dwelling stepping with the topography of the land.

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

B7 Front Boundary Setbacks

The dominant facade of the proposed new dwelling is situated 6.5m from the front property boundary, consistent with the minimum setback prescribed by this control. However, the proposed entrance porch and a portion of the first floor, extend 1.5m and 0.5m forward of the dominant facade respectively, which is non-compliant with this control.

The presence of secondary structures within the front setback is not uncommon along Headland Road, and the siting and design of the proposed front entrance porch will not be inconsistent with the

character of surrounding dwellings. The porch and first floor overhang does not diminish a 'sense of openness' along the streetscape, and does not attribute to unreasonable view loss from surrounding properties. As such, despite technical non-compliance with the 6.5m front setback prescribed, the proposal is consistent with the objectives of this control and can be supported on merit

C3 Parking Facilities

The proposal satisfies relevant requirements with the exception of the garage width requirement. Under the DCP, the lesser requirement is 50% of the building's frontage, which equates to a maximum garage width of 4.15 metres (based on a building width of 8.3 metres); the external width at the front of the garage is 4.7 metres, therefore resulting in a width variation of 0.55m

The non-compliance is largely a result of the relatively narrow width of the subject site. The garage meets the front building line requirement of 6.5m and is located behind the front porch and is also recessed 500mm beneath the cantilevered first floor above.The garage is therefore situated in a location that is likely to have the least amount of visual impact on the streetscape.

The objectives of the control are therefore satisfied, in that adequate and internalised parking is proposed in a location that will have minimal visual impact and which will not dominate the streetscape. As such, the variation is considered to be acceptable and supportable on merit.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The control requires the minimum landscape open space as being of 40% (182.12sqm) of the site area with minimum dimensions of 2 metres.

The proposed development incorporates 37.8% (172.1sqm) of landscaped open space, representing a variation of 5.5% (10sqm).

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 retains adequate landscaped open space in the front setback area that enables planting to be provided to enhance the streetscape.

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

  Comment:
  The site has been altered over the residential history of the allotment. There are no known threatened species or significant vegetation identified on site. No decrease to the existing amount of landscaped open space is proposed. The proposal does not require the removal of any significant vegetation.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density*

to mitigate the height, bulk and scale of the building.

Comment:
Sufficient landscaped open space is provided to establish vegetation that is able to mitigate the visual bulk of the proposed development.

- *To enhance privacy between buildings.*

  Comment:
  This matter has been addressed in detail under Clause D8 Privacy under WDCP. In summary, the proposal is capable of maintaining reasonable privacy between buildings (subject to recommended conditions).

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

  Comment:
  Adequate private open space is provided in the rear yard.

- *To provide space for service functions, including clothes drying.*

  Comment:
  There is sufficient space at the rear of the property that would allow for service functions.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

  Comment:
  The proposal has been reviewed by Councils Development Engineer, having regard to provisions for stormwater management and has raised no objections to the proposed stormwater system subject to conditions included in the recommendation of this report. Moreover, the proposed impervious areas on site will assist in stormwater infiltration.

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

D7 Views

In the original assessment of view loss undertaken with application DA2020/1087, the potential view loss from properties upslope (north) of the subject site, including the dwellings at 30 Headland Road and 32 Headland Road was conducted.

It should be noted that the Council assessment report for DA2020/1087 contained photographs of the views available from 30 and 32 Headland Road. However, this report mistakenly mixed up the numbers of the two properties. This report has adjusted for this error and refers to the correct property numbers when referencing the photographs and the assessment of DA2020/1087.

With regards to No.30 Headland Road, the assessment of DA2020/1087 concluded that the impact of the proposal upon the entirety of the views from that property was minor.

With regards to No.32 Headland Road, the assessment of DA2020/1087 concluded that the impact of the proposal upon the entirety of the views from that property was impact upon views would be severe

due to the proposals impact of St Patrick's Cathedral, being an iconic feature of the locality. It was determined that this view loss was being exacerbated by the built form and design methodology proposed. As such, the impact of the proposal on view loss was considered to be unreasonable.

As discussed previously within this report, the proposal has been subsequently amended to modify the roof form and reduce the building height.

During the notification of the review application, one (1) submission was received from the owner of No.32 Headland Road raising concern in relation to the view loss from the amended proposal.

New height poles were erected on the site to demonstrate the proposed height and the likely impact of the amended proposal on existing view lines.

As part of this review, the potential impact upon views has been assessed in accordance with the objectives of this development control and the Views Planning Principal developed by the NSW LEC in *Tenacity Consulting v Warringah Council* (2004) NSWLEC 140 is considered below.

Merit consideration

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

- *To 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:

32 Headland Road

The views over the subject site obtained by No.32 Headland Road are obtained in a southerly direction and include views of the ocean, Freshwater headland, land/water interface, the eastern hills of Manly and St Patrick's Cathedral (which is noted as being an iconic feature of the locality). Secondary distant views of the city skyline are obtained in a southwesterly direction over the roofs of other downslope properties. The view is partially obstructed by existing dwellings. This is demonstrated in Photos 1, 2 & 3 below.

Photo 1: *Existing views (with height poles) from living/dining of No.32 Headland Road to the south over the subject site (sitting)*

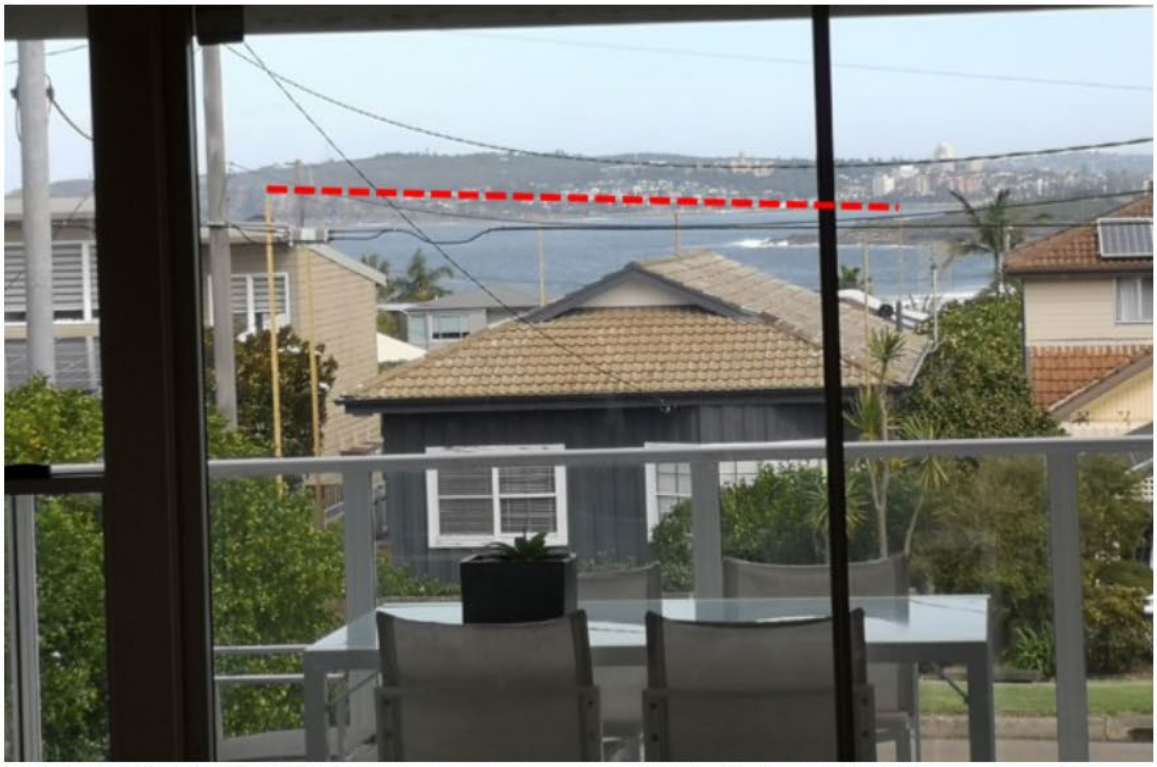


Photo 2: *Existing views (with height poles) from living/dining of No.32 Headland Road to the south over the subject site (standing)*

Photo 3: *Existing views (with height poles) from balcony of No.32 Headland Road to the south over the subject site (standing)*

30 Headland Road

The views over the subject site obtained by No.30 Headland Road are obtained in a southerly direction and include views of the ocean, Freshwater headland, Curl Curl beach and land/water interface. Secondary distant views of the city skyline are obtained in a southwesterly direction over the roofs of other downslope properties. The view is partially obstructed by existing dwellings. This is demonstrated in Photos 4 & 5 below.

Photo 4: *Existing views (with height poles) from living room balcony of No.30 Headland Road to the south over the subject site (standing)*

Photo 5: *Existing views (with height poles) from study of No.30 Headland Road to the south over the subject site (standing)*

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:

32 Headland Road

Views are primarily obtained from the rooms orientated towards the front of the dwelling. The view of the ocean, land & water interface, headland and St Patrick's Cathedral which is of concern is obtained from both a sitting and standing position and are over the southern front boundary. The distant views of the city skyline are unaffected by the proposal.

The views of key concern are obtained from the primary living area, dining and open terrace/balcony located at first floor level at the front of the dwelling. This is demonstrated in photos 1, 2 & 3 above.

30 Headland Road

Views are primarily obtained from the rooms orientated towards the front of the dwelling. The view of the ocean, land & water interface, headland and St Patrick's Cathedral which is of concern is obtained from both a sitting and standing position and are over the southern front boundary. The distant views of the city skyline are unaffected by the proposal.

The views of key concern are obtained from the first floor study and the upper floor front balcony off the living room. This is demonstrated in photos 4 & 5 above.

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:

32 Headland Road

The proposed dwelling would substantially obscure the view of the ocean, Freshwater headland, land/water interface (Manly and Freshwater), from the internal and external principle living areas of No.32 Headland Road. Iconic views of St Patrick's Cathedral are expected to be retained from a standing position. Partial ocean views and land and water interface and views of Manly and Freshwater headland would be retained to the south-west of the proposed dwelling. This is demonstrated in photos 1, 2 & 3 above.

The extent of the impact is considered to be **severe**.

30 Headland Road

No. 30 Headland Road would retain expansive views of the ocean, Freshwater headland, land/water interface (Curl Curl, Manly and Freshwater), from the internal and external principle living areas. In consideration of views both impacted and retained, in addition to the use of each respective space, the impact upon of views enjoyed throughout the whole of the dwelling at 32 Headland Road is considered to be minor.

The extent of the impact is considered to be **minor**.

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 dwelling is fully complaint with required building and wall heights, as well as side and rear setbacks. The minor breach to the front setback is not considered to result in additional view impacts. The proposal has been amended form the original design (as refused within DA2020/1087) through the modified roof form and stepping of the floor levels. These modification serve to increase (iconic) view corridors of St Patrick's Cathedral from No.32 Headland Road (primarily from a standing position).

Concern is still raised in regards to the building envelope breach on western elevation. This breach would directly correlate to loss of ocean and land/water interface from No.32 Headland Road. As such, a condition of consent is recommended that the plans be amended to reduce the length of the proposed first floor balcony roof by a minimum of 1.8m. This would reduce the extent of the building envelope breach and would increase the view corridor to south-west of the proposed dwelling as viewed from No.32 Headland Road. The proposal would still retain a potion of the balcony roof, enabling suitable amenity for the occupants of the subject site.

The proposed dwelling has been amended to a more skillful design to retain the focal point of St Patrick's Cathedral view. As a result, the bulk, scale and height of the dwelling is assessed as presenting reasonable view loss (subject to conditions).

Therefore, the proposal is considered to be satisfactory with regard to this element of the planning principle.

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

Comment:
The proposed dwelling maintains a suitable streetscape impact. The proposal has been amended to a more innovative roof profile to assist in the retention of views over the proposed dwelling. As above, a condition of consent is recommended to reduce the length of the proposed first floor balcony roof. This would reduce the extent of the building envelope breach and would increase the view corridor to south-west of the proposed dwelling as viewed from No.32 Headland Road.

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

Comment:
The existing canopy trees within the vicinity will be maintained ensuring consistency with this objective. Conditions have been imposed by Council's Landscape Officer to relocate the proposed canopy tree in the front garden to the eastern side in order to maintain view corridors for No.32 Headland Road through the western portion of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979 and the planning principle outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140* .

NOTE:
The assessment whilst focusing on the two properties that are most impacted in terms of view sharing, has indicated via site visits and photographic evidence that the proposal is appropriate in terms of view sharing from all properties in the vicinity.

The proposal is satisfactory with regards to view sharing and accordingly, the proposal is supported in this particular circumstance.

D8 Privacy

Description of non-compliance

Clause D8 of the WDCP 2011 requires building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties. The proposed upper floor rear balcony associated with the primary living area will provide opportunity for overlooking of the rear private open space of the adjoining dwellings at Nos. 35 and 39 Headland Road.

Furthermore, the first floor east facing windows adjoining the proposed family/dining room would result in a spatial separation of less than 9m between the adjoining dwellings' (No.35 Headland Road) first floor balcony (private open space).

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:

First Floor Rear Balcony

The Privacy Planning Principle established by the NSW Land and Environment Court in Meriton v Sydney City Council [2004] NSWLEC 313 at 45-46 stipulates that overlooking from living areas is more objectionable than overlooking from rooms where people tend to spend less time (i.e. bedrooms).

Considering the proposed first floor rear balcony adjoins living spaces which are likely to be regularly used by the occupants of the site, the proposal cannot be supported in its current form, as it would allow for downward overlooking into the adjoining private open space. To mitigate the privacy impacts, a suitable condition has been included within this consent requiring the balcony to incorporate balustrading of solid, non-transparent material or opaque glazing measured at a height of at least 1.0m above the finished floor level on the south-western elevation. The solid balustrade will prevent downward overlooking when in a sitting position and when standing back from the edge of the balcony.

To ensure a reasonable level of visual privacy is maintained between the subject site and the western property (No.39 Headland Road), a suitable condition has been included with this consent requiring the western elevation of the upper balcony (RL 45.842) to be affixed with a screening device of louver screening with a maximum spacing of 20mm. The screening device must be to a height of 1.65m above the finished floor level.

The proposed elevated balcony would be situated forward of the existing rear balcony (and main portion of private open space) the eastern property (No.35 Headland Road) by approximately 3.5m. Furthermore, the portion of the elevated balcony closest would have a reduced depth and contain a spiral staircase for access. Given this design and the fact that the balcony would be offset form the main private open space of No.35, no additional screening measures are recommended in this instance.

Side facing windows

The proposed first floor east facing windows adjoining the proposed family/dining room would result in a spatial separation of less than 9m between the adjoining dwellings' (No.35 Headland Road) first floor balcony (private open space). In this respect, it is considered appropriate to impose a condition of consent requiring this window be either high sill (ie. containing a sill height of 1.65m from the FFL) or obscure glazed so as to deflect viewing from the opposite window.

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

To encourage innovative design solutions to improve the urban environment.

Comment:

The proposal, as amended via condition, will have an acceptable impact upon the existing urban environment.

To provide personal and property security for occupants and visitors.

Comment:

It is assumed that a sense of personal and property security will be maintained.

Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control will be achieved, subject to the condition referenced above.

D9 Building Bulk

The proposed development has been designed with varied setbacks and materiality to reduce the apparent size of the building. The amended design and reduced roof form to the rear (south) would result in the appearance of the building stepping with the fall of the land. In this regard, the proposal is considered to meet this control.

D10 Building Colours and Materials

A schedule of finishes has not been submitted with this application. Accordingly, a suitable condition has been included with this consent requiring the applicant to submit a schedule of external finishes to the Certifying Authority prior to the issue of a Construction Certificate. The external finishes are to compliment the surrounding natural and built environment and be of low glare and low reflective materials and colours. Subject to compliance with this condition, the application will satisfy the requirements of this control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

This Section 8.2 Review Application has been assessed having regard to the reasons for refusal and the previous assessment in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979, the WLEP 2011, WDCP and the relevant codes and policies of Council.

This assessment has taken into consideration the revised plans, revised Statement of Environmental Effects, other documentation supporting the application and public submissions.

Subject to compliance with conditions to delete a portion of the rear balcony roof and conditions to ensure privacy, the proposed amendments made under this review application are considered sufficient to satisfactorily address the issues identified in the original assessment report and reasons for refusal. The amended design, which includes lowering of the roof form and the lowering of the rear portion of the proposed dwelling, is considered to reduce bulk and adequately increase view corridors over the site from adjoining properties.

One (1) submissions where received in response to the notification of the review application. The issues raised in the submissions have been addressed in the “Public Notification Section” of this report and are considered to be appropriately addressed through the amended design and recommended conditions of consent.

Accordingly, the application is referred to the Northern Beaches Development Determination Panel with a recommendation for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2021/0007 for Demolition works and Construction of a dwelling house on land at Lot 99 DP 6143, 37 Headland Road, NORTH CURL CURL, 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**
AND-31976 - Sheet 1 Rev.G (Demolition Plan)	01/02/2021	A&N Design Group
AND-31976 - Sheet 2 Rev.G (Site Analysis Plan)	01/02/2021	A&N Design Group
AND-31976 - Sheet 3 Rev.G (Ground Floor Plan)	01/02/2021	A&N Design Group
AND-31976 - Sheet 5 Rev.G (North & West Elevations)	01/02/2021	A&N Design Group
AND-31976 - Sheet 6 Rev.G (East & South Elevations)	01/02/2021	A&N Design Group
AND-31976 - Sheet 7 Rev.G (Sections)	01/02/2021	A&N Design Group

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
C00.01 Rev.C	08/04/2021	Engineering Studio
C01.01 Rev.C	08/04/2021	Engineering Studio
C01.02 Rev.C	08/04/2021	Engineering Studio
C02.01 Rev.C	08/04/2021	Engineering Studio
C02.02 Rev.C	08/04/2021	Engineering Studio
C02.03 Rev.C	08/04/2021	Engineering Studio
C03.01 Rev.C	08/04/2021	Engineering Studio
C03.02 Rev.C	08/04/2021	Engineering Studio

Reports / Documentation – All recommendations and requirements contained

within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Preliminary Geotechnical Report (J2828)	24/07/2020	White Geotechnical Group
BASIX Certificate (1119982S_02)	20/04/2021	Frys Energywise

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**
AND-31976 - Sheet 8 Rev.G (Landscape Plan)	01/02/2021	A&N Design Group

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. **No Works on adjoining land**
No Approval is granted under this consent for any works on adjoining land or on property boundaries.

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

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.

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

6. **Structures Located Adjacent to Council Pipeline or Council Easement**
All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are designed in accordance with Northern Beaches Council's Water Management Policy.

Details and certification prepared by a suitably qualified Structural Engineer demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

7. **Stormwater Treatment Measures – Minor**
The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular

inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

8. **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.

9. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

a) **First floor rear balcony roof -** The "first floor" balcony roof, located at the rear of the proposed dwelling (adjacent to the "family/dining room") shall be reduced in depth by a minimum of 1.8m. The resulting balcony roof shall not exceed 2.0m in depth from the "family/dining room".

b) **Family/dining room window -** The "first floor", eastern window (labelled ASW1024SFS) adjoining the "Family/dining room" shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

c) **First floor balcony balustrading -** The "first floor" balcony adjoining the "family/dining room" is to incorporate solid balustrading on all elevations constructed of nontransparent material or opaque glazing measured at a height of at least 1.0m above the finished floor 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.

10. **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 Engineering Studio, drawing number 20280 C00.01, C02.01, C02.02, C02.03, C03.01 and C03.02 Revision C dated 08.04.21. 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. A grated junction pit is to be provided downstream of the OSD tank to capture any emergency overflows.
ii. Details of the pump-out system including the connection to the OSD tank which must be above the top water level and include a non-return valve.

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.

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

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

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

Reason: To provide public and private safety.

12. **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.

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

specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.p

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

Reason: Protection of Council's infrastructure.

14. **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.

15. **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.

16. **Privacy Screen**
A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the first floor balcony located off the "family/dining room" as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property. (DACPLC06)

17. **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.

18. **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

19. **Protection of Rock and Sites of Significance**
All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

20. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected including:
   i) all trees and vegetation located on adjoining properties,
   ii) 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.

21. **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.

22. **Installation and Maintenance of Sediment and Erosion Controls**
Council proactively regulates construction sites for sediment management.

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

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent

of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

23. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

24. **Demolition Works - Asbestos**
Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

25. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with

levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

26. **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.

27. **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.

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

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

Reason: To facilitate suitable vehicular access to private property.

29. **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

30. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive

of the following conditions:
i) one (1) native small canopy tree capable of attaining at least 6 metres in height shall be installed to the rear of the property, planted at a 75 litre size, and selected from Council's Native Species Tree Guide - Curl Curl Ward, and may include the following suggestions: Eucalyptus haemastoma or Melaleuca linariifolia, or others as listed,
ii) the proposed tree planting to the front setback shall be planted to the opposite side, east of the driveway,
iii) 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,
iv) tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

Prior to the issue of any Occupation Certificate details shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

31. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**
The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management Policy and the approved Construction Certificate plans.

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

Reason: Protection of Council's infrastructure.

32. **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) 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 over the on-site storm water detention structures is to be submitted.

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

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

33. **Post- Construction Stormwater Assets Dilapidation Report**
The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset

has been damaged by the works. Council's Guidelines are available at https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineeringspecifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

34. **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)

35. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

36. **Waste Management Confirmation**
Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

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

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

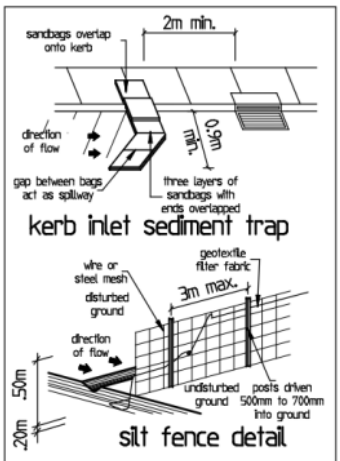
38. **Maintenance of Stormwater Treatment Measures - Minor**
Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

39. **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 me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.



sediment control notes:

all erosion and sedimentation control measurements, including revegetation and storage of soil and topsoil, shall be implemented to the standards of the soil conservation of n.s.w.

all drainage works shall be constructed around and stabilised as early as possible during development

sediment traps shall be constructed around all inlet pits, consisting of 300mm wide x 300mm deep trench.

all sediment basins and traps shall be cleaned when the structures are a maximum of 60% full of materials, including the maintenance period.

all disturbed areas shall be revegetated as soon as the relevant works are completed.

soil and topsoil stockpiles shall be located away from drainage lines and area where water may concentrate.

filter shall be constructed by stretching a filter fabric (propex or approved equivalent between post at 2.m centres). fabric shall be buried 150mm along its lower edge.

general notes

- "as selected" refers to as selected by the owner
- final location of buildings to be verified on site by a registered surveyor
- all aspects of construction to comply with the applicable performance requirements of the BCA
- Stormwater is to be collected within the site and conveyed in a pipeline to the appropriate point of discharge as directed by Council and as detailed on the approved plans.
- sewer to local authorities requirements.
- all ground lines to be verified on-site by the builder.
- written dimensions to take precedence over scaling. any plan discrepancies to be referred back to a&n design.
- finished floor levels may vary (+/- 200mm) from those indicated on plan, due to site clearing, demolition, contour inconsistencies etc.
- garage / driveway profiles must always comply to australian standards AS 2890.
- see elevations regarding all dropped edge beam details.
- tender/contract relevant to this proposal to be read in conjunction with this plan
- window spacings shown on plan are approximate and may vary on site.
- plan to be read in-conjuction with engineering plans
- All retaining walls, driveways, garden steps & fencing by owner unless noted otherwise
- All bedroom window openings higher than 2m from finished ground level to be protected in accordance with Clause 3.9.2.5 of Volume 2 of the BCA
- window and door heights on elevations are approximate only and may vary on site
- No works are to be carried out over an easement. No works are to be carried out over council property without prior council approval

site data

site area = 455.3sqm

Private open space
Provided = 167.9sqm

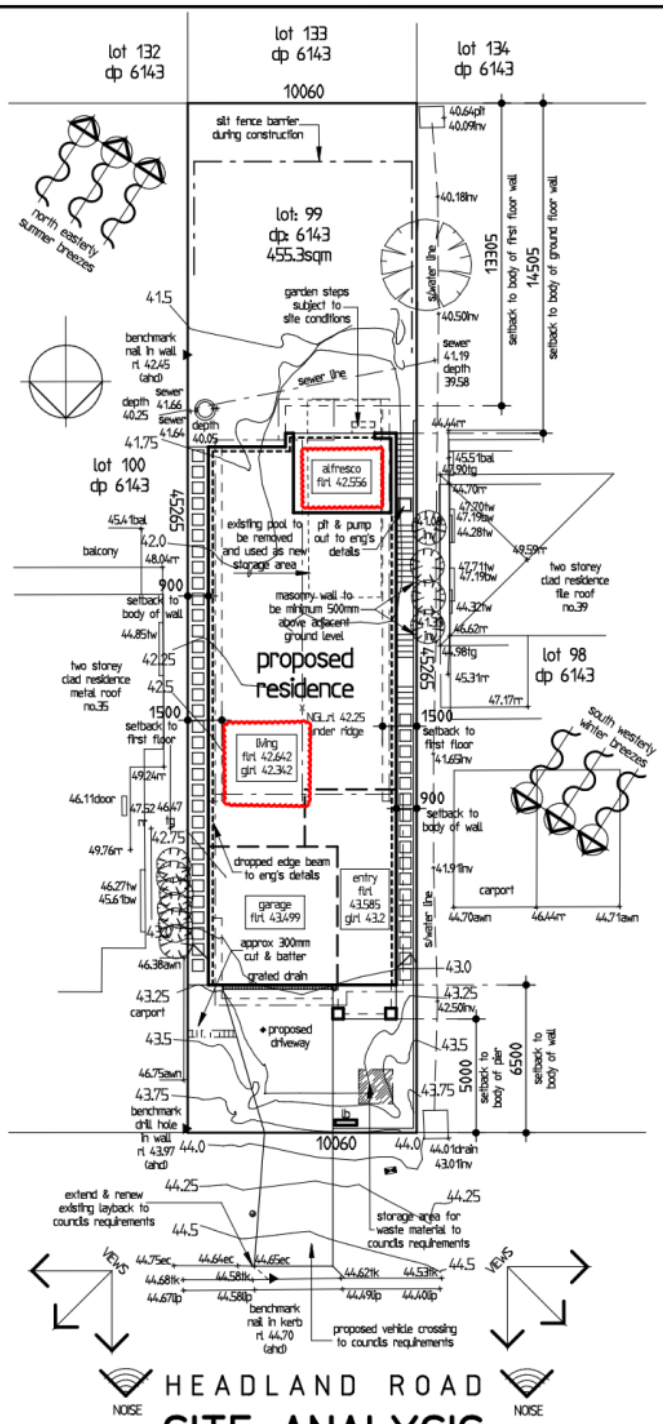
site coverage
permissable = 33.3% or 151.6sqm
provided = 39.1% or 177.9sqm

landscaped area
required = 40% or 182.1sqm
provided = 40.1% or 182.2sqm

floor areas

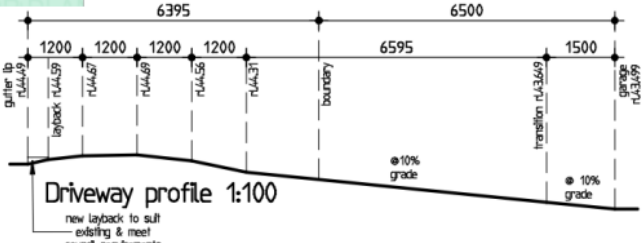
storage floor area = 17.5sqm
ground floor area = 147.9sqm
(excluding garage)
garage floor area = 34.5qm
porch floor area = 4.2sqm
alfresco floor area = 15.8sqm
first floor area = 166.1sqm
balcony floor area = 19.7sqm

total floor area = 405.7sqm or 43.7sqs



SITE ANALYSIS PLAN 1:200

refer to stormwater eng's plans for stormwater drainage details



Driveway profile 1:100

new layback to suit existing & meet council requirements

FOR
Edward Fong & Stephanie Wong
AT Lot 99, No.37 Headland Road, North Curl Curl

COUNCIL	ESTATE
Northern Beaches	-

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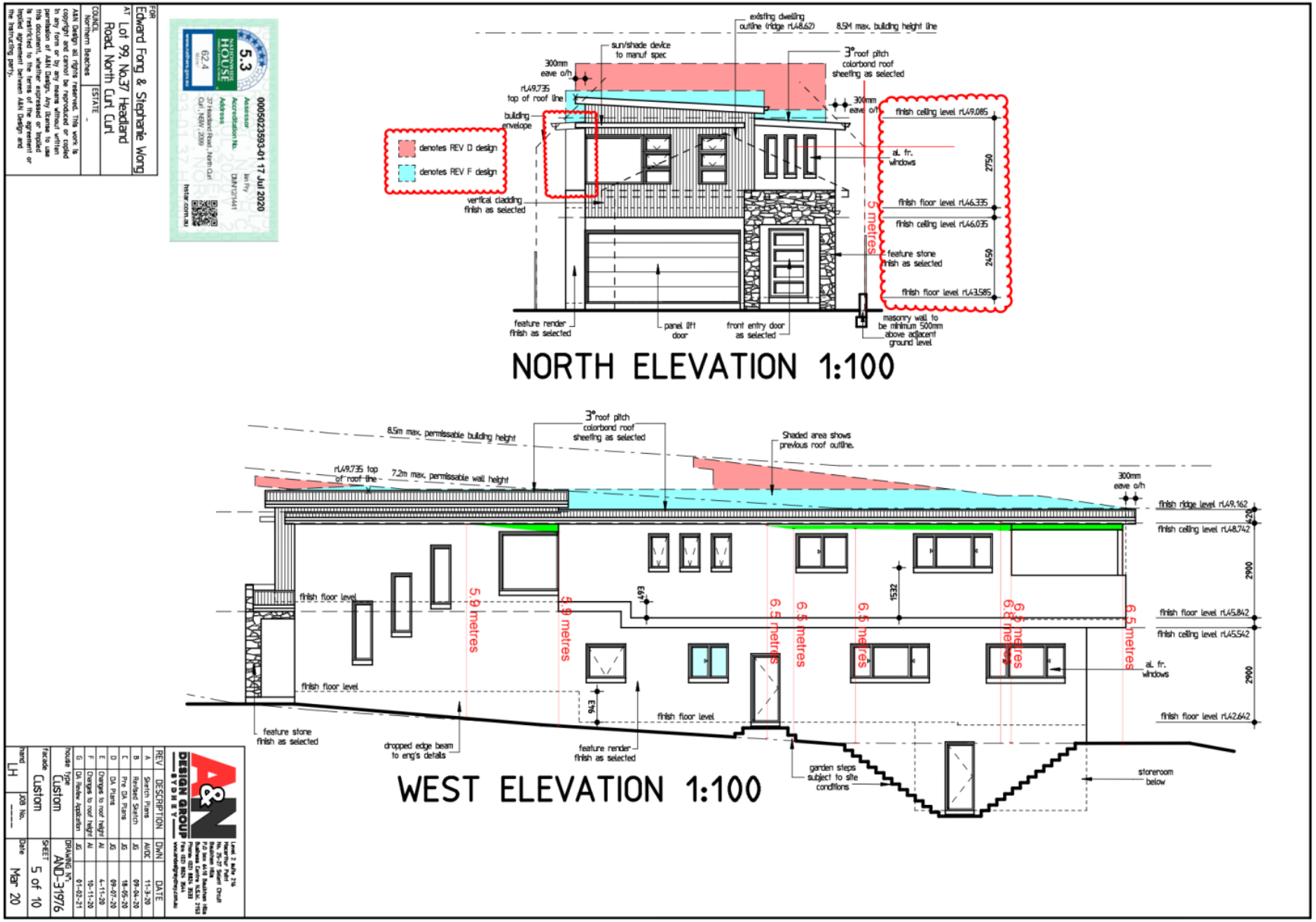
Phone: (02) 8824 3533
Fax: (02) 8824 3544
www.andesigngroupsydney.com.au

REV	DESCRIPTION	DWN	DATE
A	Sketch Plans	AV/DC	11-3-20
B	Revised Sketch	JG	09-04-20
C	Pre DA Plans	JG	18-05-20
D	DA Plans	JG	09-07-20
E	Changes to roof height	AI	4-11-20
F	Changes to roof height	AI	10-11-20
G	DA Review Application	JG	01-02-21

house type: Custom	DRAWING N°: AND-31976
facade: Custom	SHEET 2 of 10
hand: LH / JOB No. ----	Date: Mar 20


NORTH ELEVATION 1:100
existing dwelling outline (ridge rL48.62)
8.5M max. building height line
sun/shade device to manuf spec
3° roof pitch colorbond roof sheeting as selected
300mm eave o/h
rL49.735 top of roof line
building envelope
denotes REV D design
denotes REV F design
vertical cladding finish as selected
finish ceiling level rL49.085
al. fr. windows
finish floor level rL46.335
finish ceiling level rL46.035
feature stone finish as selected
finish floor level rL43.585
5 metres
2750
2450
feature render finish as selected
panel lift door
front entry door as selected
masonry wall to be minimum 500mm above adjacent ground level
WEST ELEVATION 1:100
8.5m max. permissable building height
3° roof pitch colorbond roof sheeting as selected
Shaded area shows previous roof outline.
rL49.735 top of roof-line
7.2m max. permissable wall height
finish ridge level rL49.162
finish ceiling level rL48.742
finish floor level rL45.842
finish ceiling level rL45.542
finish floor level rL42.642
finish floor level
5.9 metres
6.5 metres
6.8 metres
493
1532
943
2900
feature stone finish as selected
dropped edge beam to eng's details
feature render finish as selected
garden steps subject to site conditions
storeroom below
FOR Edward Fong & Stephanie Wong
AT Lot 99, No.37 Headland Road, North Curl Curl
COUNCIL Northern Beaches
ESTATE –
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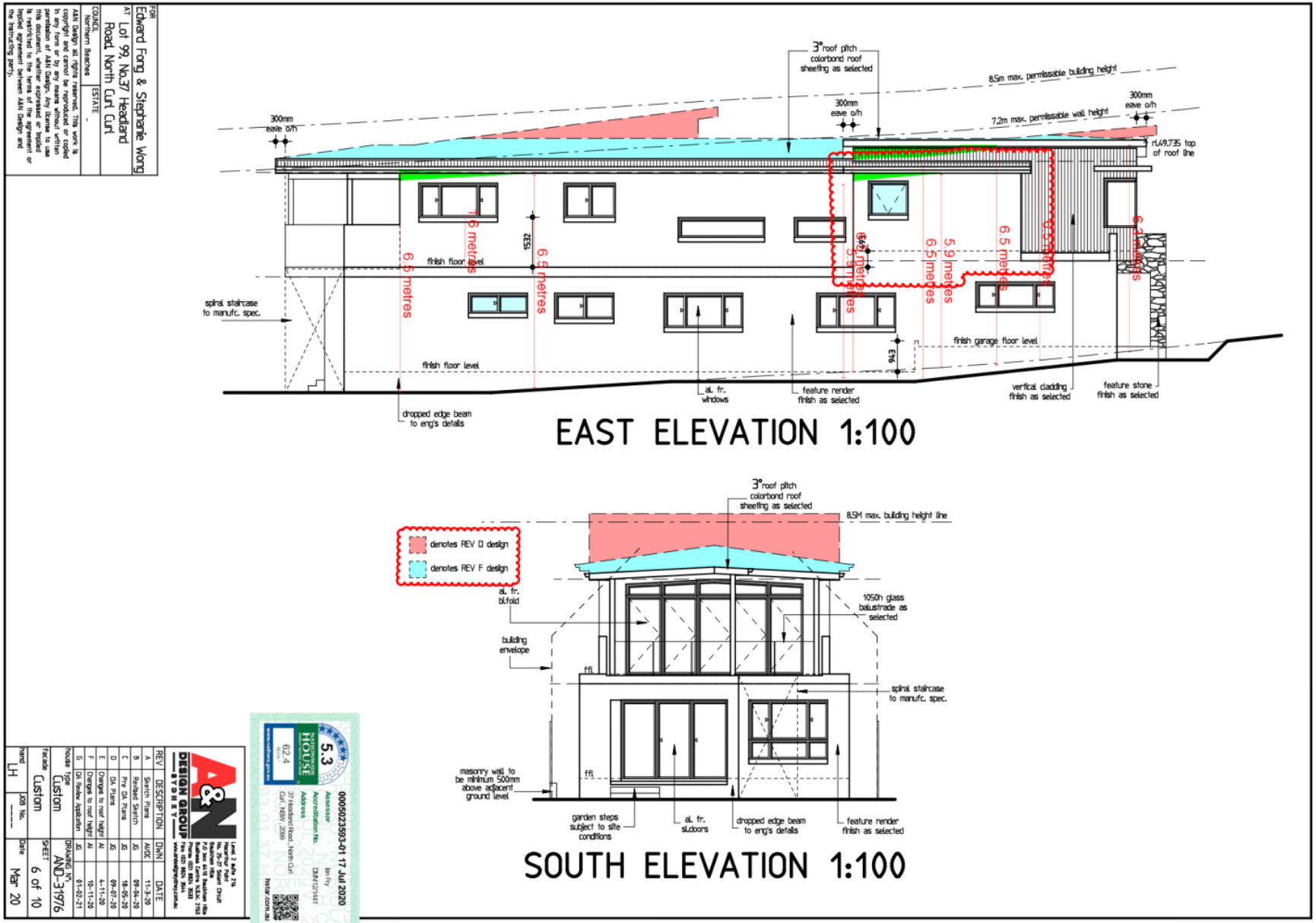
000502359-01 17 Jul 2020
5.3
NATHERS HOUSE
62.4
Assessor Ian Fry
Accreditation No. DMN13441
Address 37 Headland Road, North Curl Curl, NSW, 2099
hstar.com.au
REV DESCRIPTION DWN DATE
A Sketch Plans AVDC 11-3-20
B Revised Sketch JS 09-04-20
C Pre DA Plans JS 18-05-20
D DA Plans JS 09-07-20
E Changes to roof height AI 4-11-20
F Changes to roof height AI 10-11-20
G DA Review Application JS 01-02-21
House type Custom
Facade Custom
DRAWING Nº AND-3976
SHEET 5 of 10
Hand LH
JOB No. ——
Date Mar 20
A&N DESIGN GROUP SYDNEY
Level 2 suite 210 Hunter Pass Nos. 25-27 Grant Circuit Hurstville NSW 2220 P.O Box 6419 Beaulieu Hills Business Centre N.S.W. 2163 Phone (02) 9570 3544 Fax (02) 9570 3544 www.anndesigngroup.com.au


EAST ELEVATION 1:100
SOUTH ELEVATION 1:100
3° roof pitch colorbond roof sheeting as selected
8.5m max. permissable building height
7.2m max. permissable wall height
300mm eave o/h
RL49.735 top of roof line
finish floor level
finish garage floor level
spiral staircase to manufc. spec.
dropped edge beam to eng's details
al. fr. windows
feature render finish as selected
vertical cladding finish as selected
feature stone finish as selected
6.5 metres
5.9 metres
5.3 metres
1532
1993
943
denotes REV D design
denotes REV F design
al. fr. bi.fold
building envelope
1050h glass balustrade as selected
8.5M max. building height line
ffl
masonry wall to be minimum 500mm above adjacent ground level
garden steps subject to site conditions
al. fr. sldoors
FOR Edward Fong & Stephanie Wong
AT Lot 99, No.37 Headland Road, North Curl Curl
COUNCIL Northern Beaches
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A&N DESIGN GROUP
SYDNEY
REV DESCRIPTION DWN DATE
A Sketch Plans AVDC 11-3-20
B Revised Sketch AS 09-04-20
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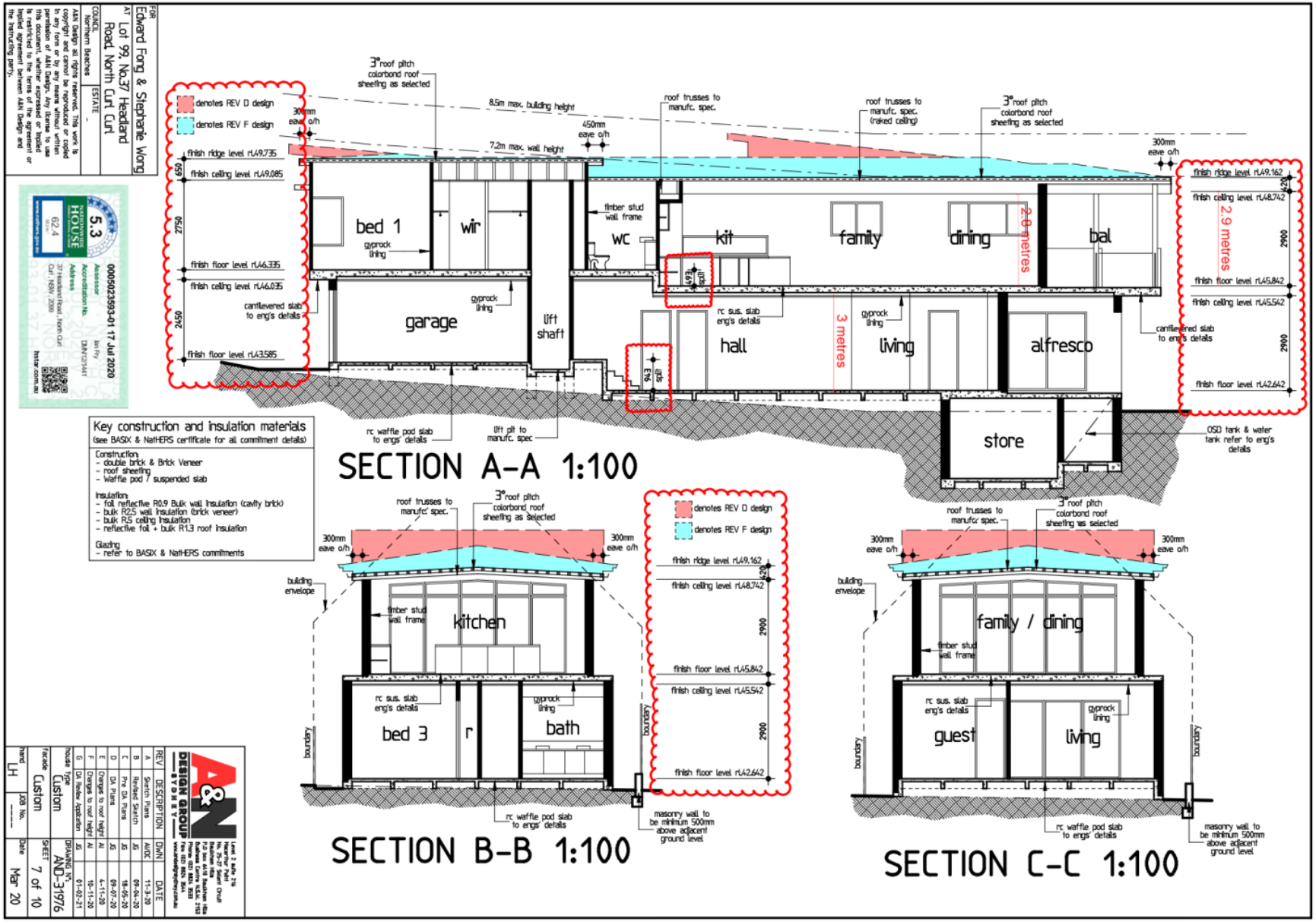
House type Custom
Facade Custom
DRAWING Nº AND-3976
SHEET 6 of 10
Hand LH
JOB No. ——
Date Mar 20
5.3 NATHERS HOUSE
Assessor Ian Fry
Accreditation No. DMN/121461
Address 37 Headland Road, North Curl Curl, NSW, 2099
62.4 MJ/m²
0005023593-01 17 Jul 2020
hstar.com.au


FOR Edward Fong & Stephanie Wong
AT Lot 99, No.37 Headland Road, North Curl Curl
COUNCIL Northern Beaches
ESTATE -
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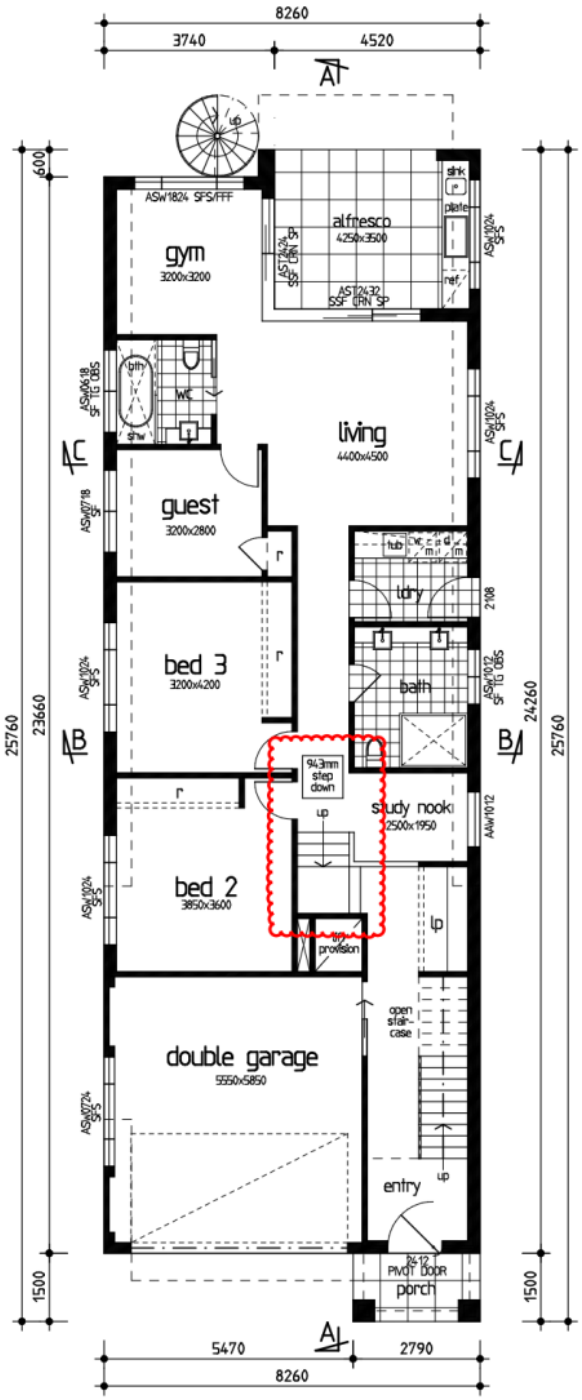
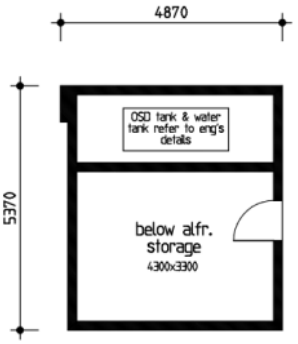
denotes REV D design
denotes REV F design
3°roof pitch colorbond roof sheeting as selected
8.5m max. building height
7.2m max. wall height
300mm eave o/h
450mm eave o/h
roof trusses to manufc. spec.
roof trusses to manufc. spec. (raked ceiling)
finish ridge level rL49.735
finish ceiling level rL49.085
finish floor level rL46.335
finish ceiling level rL46.035
finish floor level rL43.585
cantilevered slab to eng's details
bed 1
wir
garage
gyprock lining
lift shaft
timber stud wall frame
wc
kit
family
dining
bal
hall
living
alfresco
store
2.8 metres
3 metres
2.9 metres
rc sus. slab eng's details
rc waffle pod slab to engs' details
lift pit to manufc. spec
OSD tank & water tank refer to eng's details
finish ridge level rL49.162
finish ceiling level rL48.742
finish floor level rL45.842
finish ceiling level rL45.542
finish floor level rL42.642
SECTION A-A 1:100
Key construction and insulation materials
(see BASIX & NatHERS certificate for all commitment details)
Construction:
- double brick & Brick Veneer
- roof sheeting
- Waffle pod 7 suspended slab
Insulation:
- foil reflective R0.9 Bulk wall insulation (cavity brick)
- bulk R2.5 wall insulation (brick veneer)
- bulk R.5 ceiling insulation
- reflective foil + bulk R1.3 roof insulation
Glazing
- refer to BASIX & NatHERS commitments
building envelope
kitchen
bed 3
r
bath
boundary
masonry wall to be minimum 500mm above adjacent ground level
SECTION B-B 1:100
family / dining
guest
living
SECTION C-C 1:100
5.3
62.4
000502359 3-01 17 Jul 2020
hstar.com.au
A&N DESIGN GROUP SYDNEY
REV DESCRIPTION DWN DATE
A Sketch Plans AVDC 11-3-20
B Revised Sketch JS 09-04-20
C Pre DA Plans JS 18-05-20
D DA Plans JS 09-07-20
E Changes to roof height AI 4-11-20
F Changes to roof height AI 10-11-20
G DA Review Application JS 01-02-21
House type Custom
Facade Custom
Hand LH
JOB No. ----
DRAWING No. AND-3976
SHEET 7 of 10
Date Mar 20



GROUND FLOOR PLAN 1:100



SUB FLOOR PLAN 1:100

A&N DESIGN GROUP SYDNEY
Level 2 suite 216
Macarthur Point
No. 25-27 Solent Circuit
Baulkham Hills
P.O box 6410 Baulkham Hills
Business Centre N.S.W. 2153
Phone: (02) 8824 3533
Fax: (02) 8824 3544
www.andesignsydney.com.au

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D	DA Plans	JG	09-07-20
E	Changes to roof height	AI	4-11-20
F	Changes to roof height	AI	10-11-20
G	DA Review Application	JG	01-02-21

house type: Custom
DRAWING N°: AND-31976
facade: Custom
SHEET: 3 of 10
hand: LH
JOB No.: ------
Date: Mar 20

FOR
Edward Fong & Stephanie Wong
AT Lot 99, No.37 Headland Road, North Curl Curl
COUNCIL: Northern Beaches
ESTATE: -

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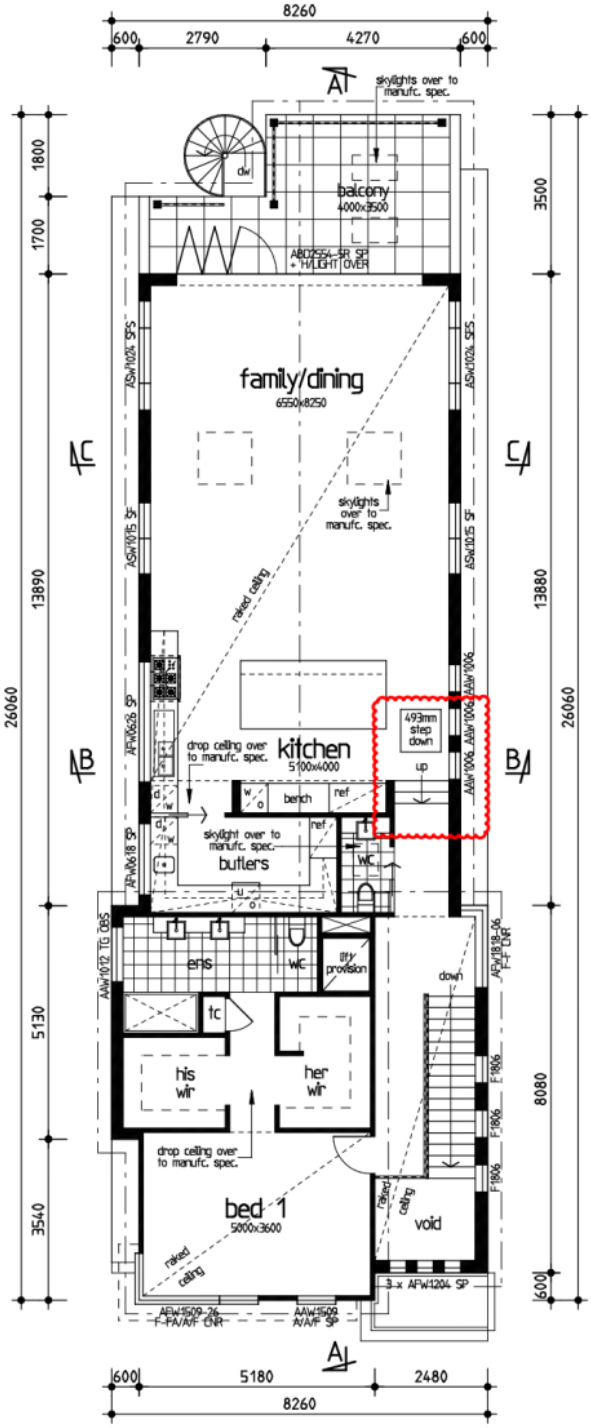

FIRST FLOOR PLAN 1:100

FOR
Edward Fong & Stephanie Wong
AT Lot 99, No.37 Headland Road, North Curl Curl

COUNCIL	ESTATE
Northern Beaches	-

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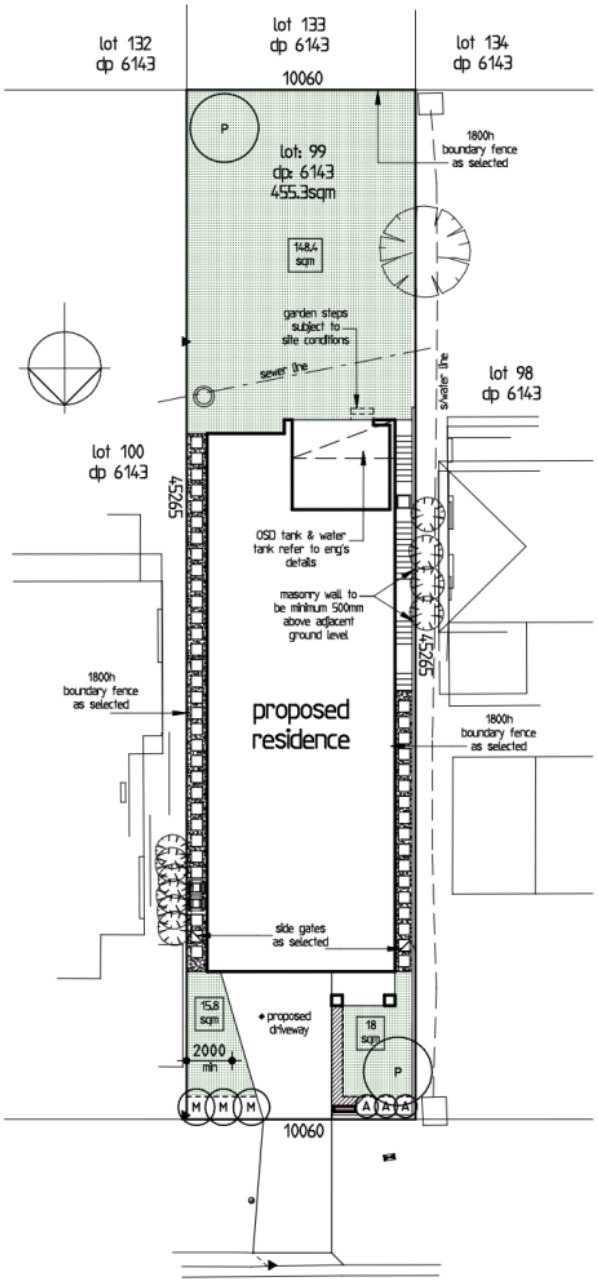
G	DA Review Application	JG	01-02-21

house type: Custom		DRAWING N°: AND-31976	
facade: Custom		SHEET 4 of 10	
hand: LH	JOB No. ----	Date: Mar 20	

5.3 NATIONWIDE HOUSE ENERGY RATING SCHEME
62.4 MJ/m²
www.nathers.gov.au
0005023593-01 17 Jul 2020
Assessor: Ian Fry
Accreditation No.: DMN12/1441
Address: 37 Headland Road, North Curl Curl, NSW, 2099
hstar.com.au



HEADLAND ROAD

LANDSCAPE PLAN 1:200

LEGEND

- PROPOSED TURF AREAS
- PROPOSED PERMEABLE PEBBLED AREA
- DIANELLA REVOLUTA ● 600 CTS
- BRICK EMBEDDING TO MASS PLANTED AREAS
- GARBAGE STANDING AREA
- STEPPING STONES (450 X 450)
- LETTERBOX

PLANT SCHEDULE

NAME	KEY	QTY	SIZE	COMMON NAME	MATURE HEIGHT
ACMEN SMITHII 'ALLYN MAGIC'	A	3	0.2L	DWARF LILLI PILLI	1M
MURRAYA PANICULATA	M	3	0.2L	ORANGE JASMINE	2M
PYRUS USSURIENSIS	P	2	45L	MANCHURIAN PEAR	10M

5.3 NATIONWIDE HOUSE ENERGY RATING SCHEME 62.4 MJ/m² www.nathers.gov.au

0005023593-01 17 Jul 2020
Assessor: Ian Fry
Accreditation No.: DMN12/1441
Address: 37 Headland Road, North Curl Curl, NSW, 2099
hstar.com.au

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house type: Custom
DRAWING N°: AND-31976
facade: Custom
SHEET: 8 of 10
hand: LH
JOB No.: ----
Date: Mar 20

FOR
Edward Fong & Stephanie Wong
AT Lot 99, No.37 Headland Road, North Curl Curl
COUNCIL: Northern Beaches
ESTATE: -

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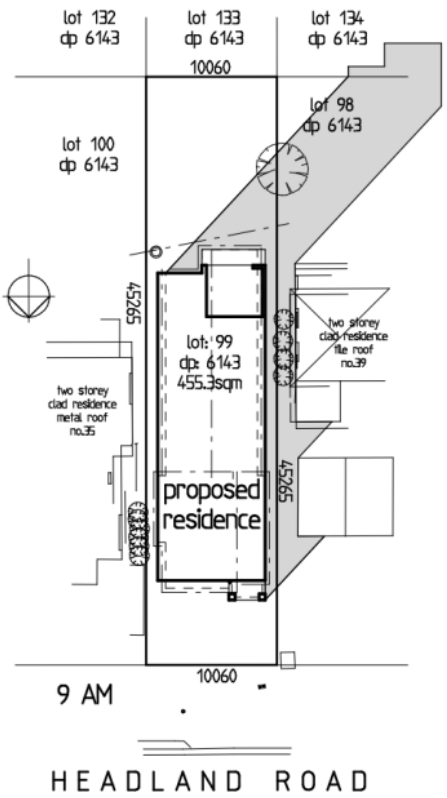

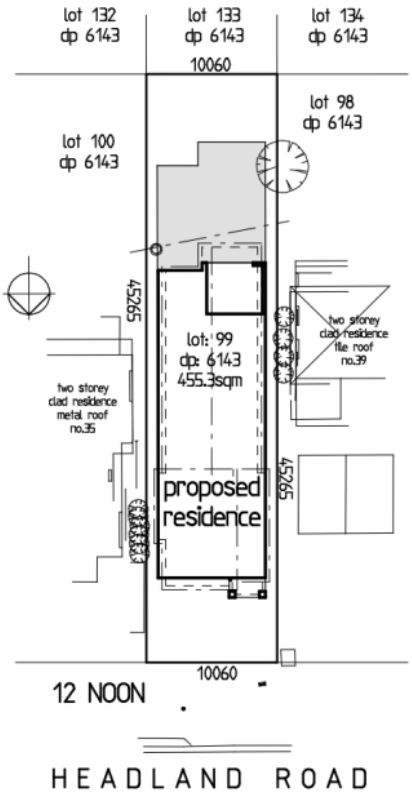

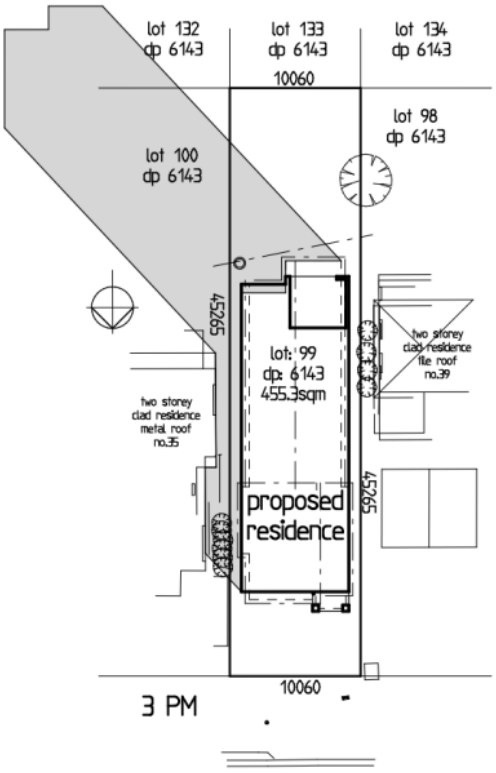

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G	DA Review Application	JG	01-02-21

house type: Custom
DRAWING N°: AND-31976
facade: Custom
SHEET: 9 of 10
hand: LH
JOB No.: ——
Date: Mar 20

FOR
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AT Lot 99, No.37 Headland Road, North Curl Curl
COUNCIL: Northern Beaches
ESTATE: -

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SHADOW DIAGRAMS
JUNE 21ST MID-WINTER 1:350

shadow diagrams to be used as a guide only site conditions may cause variations

BASIX certificate

(see BASIX & NatHERS certificate for all commitment details)

water commitments

fixtures
- The applicant must install showerheads with a minimum rating of 3 star (> 7.5 but <= 9 L/min) in all showers in the development.
- The applicant must install a toilet flushing system with a minimum rating of 4 star in each toilet in the development.
- The applicant must install taps with a minimum rating of 4 star in the kitchen in the development.
- The applicant must install basin taps with a minimum rating of 4 star in each bathroom in the development.

rainwater tank
- The applicant must install a rainwater tank of at least 3000 litres on the site. This rainwater tank must meet, and be installed in accordance with, the requirements of all applicable regulatory authorities.
- The applicant must configure the rainwater tank to collect rain runoff from at least 180 square metres of the roof area of the development (excluding the area of the roof which drains to any stormwater tank or private dam).
- The applicant must connect the rainwater tank to:
  all toilets in the development
  the cold water tap that supplies each clothes washer in the development
  at least one outdoor tap in the development (Note: NSW Health does not recommend that rainwater be used for human consumption in areas with potable water supply.)

energy commitments

hot water
- The applicant must install the following hot water system in the development, or a system with a higher energy rating: gas instantaneous with a performance of 6 stars

cooling system
- The applicant must install the following cooling system, or a system with a higher energy rating, in at least 1 living area: 3-phase airconditioning; Energy rating: EER 3.0 - 3.5
- The applicant must install the following cooling system, or a system with a higher energy rating, in at least 1 bedroom: 3-phase airconditioning; Energy rating: EER 3.0 - 3.5
- The cooling system must provide for day/night zoning between living areas and bedrooms.

ventilation
The applicant must install the following exhaust systems in the development:
- At least 1 Bathroom: Individual fan, ducted to roof or facade; Operation control: manual switch on/off
- Kitchen: Individual fan, ducted to roof or facade; Operation control: manual switch on/off
- Laundry: natural ventilation only, or no laundry; Operation control: n/a

heating system
- The applicant must install the following heating system, or a system with a higher energy rating, in at least 1 living area: 3-phase airconditioning; Energy rating: EER 3.0 - 3.5
- The applicant must install the following heating system, or a system with a higher energy rating, in at least 1 bedroom: 3-phase airconditioning; Energy rating: EER 3.0 - 3.5
- The heating system must provide for day/night zoning between living areas and bedrooms.

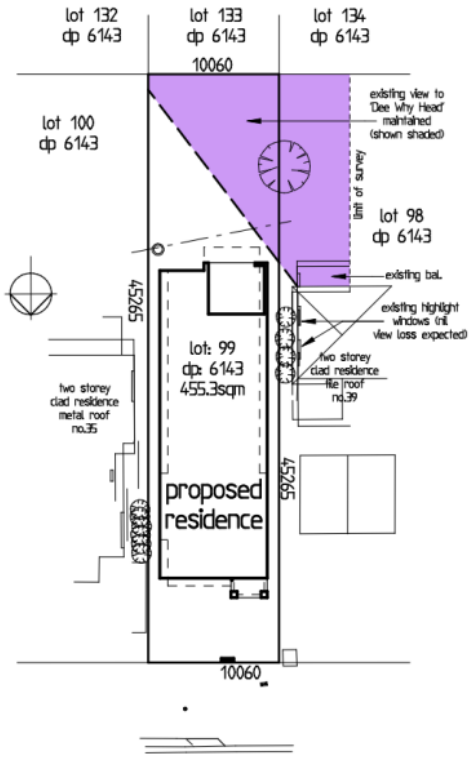
artificial lighting
The applicant must ensure that the "primary type of artificial lighting" is fluorescent or light emitting diode (LED) lighting in each of the following rooms, and where the word "dedicated" appears, the fittings for those lights must only be capable of accepting fluorescent or light emitting diode (LED) lamps:
at least 4 of the bedrooms / study; dedicated
at least 2 of the living / dining rooms; dedicated
the kitchen; dedicated
all bathrooms/toilets; dedicated
the laundry; dedicated
all hallways; dedicated

natural lighting
- The applicant must install a window and/or skylight in the kitchen of the dwelling for natural light.
- The applicant must install a window and/or skylight in 3 bathroom(s)/toilet(s) in the development for natural lighting

other
- The applicant must install a gas cooktop & electric oven in the kitchen of the dwelling.
- The applicant must construct each refrigerator space in the development so that it is "well ventilated", as defined in the BASIX definitions.
- The applicant must install a fixed outdoor clothes drying line as part of the development.

thermal comfort
The applicant must construct the development in accordance with the requirements set out in the assessor certificate and in accordance with those aspects of the development application or application for complying development certificate which were used to calculate the values shown in the assessor certificate No project score

- water: 45 (target 40)
- thermal comfort: pass (target pass)
- energy: 50 (target 50)



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D	DA Plans	JG	09-07-20
E	Changes to roof height	AI	4-11-20
F	Changes to roof height	AI	10-11-20
G	DA Review Application	JG	01-02-21

house type: Custom
DRAWING N°: AND-31976
facade: Custom
SHEET: 10 of 10
hand: LH
JOB No.: ------
Date: Mar 20

FOR
Edward Fong & Stephanie Wong
AT Lot 99, No.37 Headland Road, North Curl Curl
COUNCIL: Northern Beaches
ESTATE: -

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HEADLAND ROAD

VIEW LOSS ANALYSIS 1:350

ITEM 3.3	**DA2021/0046 - 29 KIRRA ROAD, ALLAMBIE HEIGHTS - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SECONDARY DWELLING**
REPORTING MANAGER	**Anna Williams**
TRIM FILE REF	**2021/317553**
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 DA2021/0046 for demolition works and construction of a dwelling house including secondary dwelling on land at Lot 5 DP 114000, 29 Kirra Road, Allambie Heights, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0046

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 5 DP 114000, 29 Kirra Road ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Demolition works and construction of a dwelling house including secondary dwelling
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:	Roserina Cotilda Murace
Applicant:	David McCrae

Application Lodged:	29/01/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	08/02/2021 to 22/02/2021
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 2,050,400.00

Executive Summary

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site. The proposal is referred to the Development Determination Panel as there are 3 submissions objecting to the proposal, and the cost of works exceed $1 million for the dwelling house.

The critical assessment issues for the proposal relate to privacy (visual and acoustic) impacts on adjacent land and view impacts. Considerations of stormwater have been addressed by on-site disposal methods to be used as no easement is available to drain water though the rear of the site. The applicant has sought to respond to the issues raised with some minor amendments the plans however

following further consideration / review by the adjacent neighbours the issues of privacy (visual and acoustic) and view impact remain unresolved. Councils Engineers are satisfied with onsite stormwater disposal.

The applicant has sought to address view and privacy impacts by a measured response to adjust the rear setback by shifting the entire building footprint closer to the street frontage. The increased rear setback provided however is still insufficient to achieve the required privacy and view sharing considered to maintain an acceptable outcome for adjacent properties. In order to address this issue it is recommended that a martially greater setback be achieved with the complete building footprint closer to the road (but still compliant with the front boundary setback) by a recommended condition of consent. This has no other amenity impacts on adjacent land or compliance with the built form controls and does not change internal layout / floor plan.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed house will be 2 storey, constructed of brick in an 'L' shape to house the bedrooms, and steel framed with glazed doors for the central living areas, with a metal roof. The lower ground floor contains the garage with a 'granny flat' and undercroft area. The upper level contains the Principal dwelling.

Details of the proposed works are as follows:

- **RL109.46** Ground Floor -Garage, Secondary Dwelling, laundry, entry, stairs and lift access, storage.
- **RL112.5** First Floor - Entry, kitchen, living, dining room, stair and lift access, bathrooms (2), bedrooms (3), storage, balcony
- **RL115.75 to 116.728** - Roof level.

The proposed works also include demolition of existing structures, site preparation works, excavation, driveways, landscaping, drainage, fencing and ancillary site works.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 5 DP 114000 , 29 Kirra Road ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	The site is located on the northern side of Kirra Road having a maximum width 18.4 metres (m) and a depth of 42.9m, with a lot area of 764.7 square metres (sqm). The existing structures on the site consist of a two storey brick dwelling house with the living area on the first floor and garage below. The elevation of the site drops from 111m AHD in the south-western corner to 108.5m AHD across the length of the site. A number of low landscaped retaining walls are located across the site. There are no heritage items within the immediate vicinity or significant rock outcrops or large trees on the land. A sewer line is located within the site, parallel to the rear boundary. There are no known flooding issues on the site and the land is within landslip "Area B" classification. Natural drainage across the site falls towards the northeast and surrounding development consists single storey or 2 storey dwelling houses in landscaped settings, with a number of nearby properties also having outbuildings or Secondary dwellings on site. Some properties (including the subject site) along Kirra Road or Libya Crescent have district views or distant ocean views to the east and north east due to the board ridgetop location above Brookvale Valley.

Map:

SITE HISTORY

Building Application No.C761/59 for a brick dwelling was approved by Council in 1959.

Pre-lodgement Meeting No.PLM2020/0211 for the construction of a dwelling house was held with Council on 8.9.2020. The PLM included the following concluding comments "The proposal demonstrates reasonable merit and may be supported, subject to minor adjustments to the proposed building design (particularly to the front of the development facing the street) based on the advice provided".

The applicant has addressed this issue as detailed in the PLM notes by later amendment to the plans (dated 19.3.2021). The front of the building is now an "L" shape with, front windows, a balcony area and landscape planter with adjacent front door stair access.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	**Comments**
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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)	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. Clauses 54 and 109 of the EP&A Regulation 2000 allows Council to request additional information. Following the completion of the notification period some additional information was requested in relation to considerations regarding privacy screening assessment considerations. This included consideration to shift the building footprint closer to the road to retain the existing average rear setback alignment between adjacent dwellings. Some supplementary information was provided which is otherwise capable of being addressed by conditions to achieve the same outcome with the construction certificate. Re-notification of the plans is therefore not required by the *Community Participation Plan*, however the adjacent neighbours were advised of the amended plans (made viewable online) and opportunity provided to discuss the changes with Council staff and time (minimum 14 days) allowed to make any comments in response. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 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. 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. 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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and	(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.

Section 4.15 Matters for Consideration'	Comments
economic impacts in the locality	(ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development, subject to conditions. Considerations of slope, adjacent development, trees, land slope, streetscape, views, shadowing, privacy, drainage, lot shape / area and environmental factors have been considered and where appropriate conditions are recommended to be followed during construction certification to address issues.
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, subject to conditions, in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 08/02/2021 to 22/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mrs Tania Maree Paton	31 Kirra Road ALLAMBIE HEIGHTS NSW 2100
Mr Scott Anthony Fitz-Gerald	16 Libya Crescent ALLAMBIE HEIGHTS NSW 2100
Ms Dominique Louise Baldock	27 Kirra Road ALLAMBIE HEIGHTS NSW 2100

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

- Views

- Privacy (visual and acoustic)

The matters raised within the submissions are addressed as follows:

- ***Concern that the proposal will impact the existing view corridor of the coastal horizon from No.31 Kirra Road.***
  Comment:
  This issue has been considered in detail within this assessment report under *Part D7 Views*. In summary, the issue deals with views across a side boundary, across the rear central part of the site in an easterly direction. The view line includes the ocean horizon and area beyond Brookvale - Curl Curl / Dee Why. The view is from a hinterland position, however it is a distinctive view corridor due to the ridgeline position of Kirra Road. Views include parts of the ocean horizon and coastal interface. In considering this issue, various influencing factors have been identified, including the differences in adjacent floor / site levels, setbacks and building configurations / design, slope, and opportunities for a more skillful design response pursuant to Planning Principle (Views) established in *Tenacity Consulting v Warringah Council (2004) NSW LEC 140.*

  Recommended conditions to address privacy also assist to minimise view impacts due to the pattern of adjacent development and the building design proposed.

- ***Concern that the large rear deck space / open plan upper living area increases privacy (visual and acoustic) impacts toward the rear and overlooking into adjacent private open space of No.27 Kirra Road.***
  Comment:
  A detailed merit consideration of privacy impacts is provided under the heading *Part D8 Privacy* within this report. The proposal complies with the numerical rear setback requirements under the Warringah DCP. However, the new open plan living and extensive glazed floor to ceiling walls and outside rear deck substantially increases overlooking to adjacent land. In addition to this, the dwelling footprint is proposed to extend closer toward the rear boundary which places it directly adjacent to rear yards (private open space) rather that at a comparable rear alignment to adjacent dwellings. Privacy objectives of the DCP require buildings to provide *a high level of visual and acoustic privacy* for neighbours (as well as occupants of a proposal), and that living areas, rooms, windows and balconies avoid overlooking to adjacent private open space (rather than rely wholly on screens / barriers). In this case, the desirable outlook is also toward the coast and therefore innovative design solutions are required to minimise the increased privacy impacts on adjacent land. A more consistent rear building alignment will assist in retaining views and afford a more sympathetic privacy response between adjacent properties.

  This is addressed by conditions and does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	**Supported with conditions.** The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department.

Internal Referral Body	Comments
	There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. 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.
Landscape Officer	**Supported with conditions.** This application is for the demolition of an existing residential dwelling, and the construction of a new residential dwelling with double garage and new landscape works. Councils Landscape referral section has considered the application against the Warringah Local Environment Plan, and the following Warringah DCP 2011 controls: • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation A Landscape Plan is provided with the application and proposed works include the in-ground planting of trees, shrubs, grasses and groundcovers, as well as on-slab planting of shrubs. The Statement of Environmental Effects provided with the application notes that a few trees are to be removed as a result of the proposed works. The Architectural Plans provided indicate that two trees are to be removed. These two trees are located within the front yard of the property, with one located adjacent to the western boundary, with the other tree located centrally within the front setback. These trees have been identified as a *Jacaranda* and a *Bottlebrush*, however both have been identified as having heights below 5m in the Site Survey. These trees therefore do not require Council's approval for removal. It is noted that there is an existing large, significant canopy tree located in the adjoining property of the north. The proposed works within the Tree Protection Zone appear to be minor in nature, however a Project Arborist shall be consulted to ensure the pier footings of the proposed timber ramp, as well as the new low retaining wall is located clear of significant roots and that the health of the tree will not be impacted. An existing street tree is also present at the front of the site within the road reserve, adjacent to the southern boundary. The protection of this tree, as well as those in adjoining properties is vital to satisfy control E1, which seeks to "protect and enhance the scenic value and character that trees and bushland vegetation provide", as well as to "effectively manage the risks that come with an established urban frost through professional management of trees". Concern is raised regarding the proposed landscape works, particularly in relation to proposed tree and shrub species. Currently, all proposed trees within the site are exotic species. It is

Internal Referral Body	Comments
	recommended that at least 50% of proposed trees be locally native in order to enhance indigenous vegetation which is a key objective of D1. Concern is also raised regarding the proposed use of *Rhapiolepis*, which has been identified as an environmental weed, and is therefore an undesirable species, and as a result will require substitution for a locally native alternative. The completion of landscape works, including these species changes, are necessary to satisfy control D1, as key objectives include 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", and to "enable planting to maintain and enhance the streetscape". The landscape component of the proposal is therefore acceptable subject to the protection of existing trees, and the completion of landscape works as proposed on the Landscape Plans, inclusive of tree and shrubs species changes.
NECC (Development Engineering)	**Supported with conditions.** Development Engineering has no objection to the application subject conditions of consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to *Ausgrid* and a referral response was received on 10.2.2021 that raised no objections and no referral requirement.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Affordable Rental Housing) 2009

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

Division 2: Secondary dwellings

Clause 19: Definition

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

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

Note: The standard instrument defines secondary dwelling as follows:

"***secondary dwelling*** *means a self-contained dwelling that:*

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

Comment:

The proposed use is defined under WLEP 2011 as a detached Secondary dwelling.

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 R2 Low Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	**Consistent.** The development involves the construction of an attached Secondary dwelling, as defined by the

	Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

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

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The proposal complies with these requirements. (A principal dwelling will be situated on the land)
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	The proposal complies with these requirements. (Garage area not included - secondary dwelling area is 41.4sqm)
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres. (b) parking if no additional parking is to be provided on the site.	The proposal complies with these requirements (Site area 764.7 sqm)

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

Clause 24: No subdivision

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

Conclusion on SEPP ARH
The site has satisfactory area for private open space, including privacy, 'casual' parking for the principal dwelling and domestic service areas for the site, reasonable residential amenity, and access to the public street (fire egress).

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1165775M, dated 23 December 2020)

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

Commitment	Required Target	Proposed
Water	40	Achievable
Thermal Comfort	Pass	Achievable
Energy	52	Achievable

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* and a referral response was received on 10.2.2021 that raised no objections and subject to standard advisory requirement as recommended.

Other Service Authorities
The proposal does not require referral to *Transport NSW* (formerly RMS) and no other Service Infrastructure Authority referral issues are raised pursuant to the SEPP.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m	N/A	Yes
Secondary dwelling size	60 sqm	41.4sqm	N/A	Yes

Compliance Assessment

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.5m Dwelling house	4%	No*
B3 Side Boundary Envelope	45 degrees at 4m East	Within envelope Dwelling house	N/A	Yes
	45 degrees at 4m West	Encroachment Dwelling house	1.0m (7.2%)	No*
B5 Side Boundary Setbacks	0.9m East	2.4m Dwelling house	N/A	Yes
	0.9m West	2.0m Dwelling house	N/A	Yes

B7 Front Boundary Setback	6.5m	8.3m Garage wall 13.8m Dwelling wall	N/A N/A	Yes Yes
Rear Boundary Setback	6.0m	7.4m Deck 11.2m Dwelling wall	N/A N/A	Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% 305.9sqm	42% 319.8sqm	N/A	Yes

*Refer to detailed merit assessment under the heading Built Form controls within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance
The maximum wall height is up to 7.5m for part of the side wall and rear wall of the building, being a variation of 4%.

Merit consideration:

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

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

  Comment:

  The non-compliance with the wall height control relates to the northern and eastern (glazed) wall planes (toward the north eastern corner) and is principally associated with the clerestorey window used below the skillion roof style. Overall the building complies with the 8.5m maximum height and the non-compliance with wall height is influenced by the 1.0m cross slope of the land. The height has a minimal impact on overshadowing to the east, and the building building bulk and scale, by comparison is consistent with newer (contemporary) dwellings in the area and includes wide setbacks of 2.0m or more. Despite the wall height non-compliance at the north eastern corner the dwelling still achieves a minimal visual impact and maintains reasonable residential amenity with respect to height, bulk and setbacks.

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

  Comment:

  There are no significant trees on the site however the surrounding land has scattered mature trees within the landscaped areas of houses and along the street with the tree canopy generally being higher than most houses. In this regard, the proposed building exceeds the maximum permitted 7.2m wall height control to a minor extent and is generally lower than the level of nearby mature native trees. The site is on a north facing site with the surrounding area providing a backdrop for development along Kirra Road. A landscape plan is provided that has various selected tree and shrub planting of various heights with new trees concentrated toward the

street frontage, and is consistent with this objective.

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

  Comment:

  The non-compliance with wall height is limited to a short section of the clerestory window / living room corner element and will have no unreasonable impact on view sharing from the nearby public land. Issues of view sharing from surrounding private property have been considered during the site inspection and plan assessment and meet the requirements of *Clause D7 Views*.

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

  Comment:

  The non-complying sections of wall are limited to the corner of the side walls at the northern end of the building and is influenced by the existing excavation of the site and slope. Impacts on views from public domain are not unreasonable in the context of the pattern of development and broad views available. No unreasonable amenity, overshadowing, or building bulk impacts will result from the non-compliant wall height with regard to adjoining properties. The submitted shadow diagrams demonstrate compliance for 21 June, 9am to 3pm period for adjacent private open space.

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

  Comment:

  The proposal utilises the existing site levels with minimal excavation to change the existing levels in the site. Due to the natural cross fall of 1m across the building footprint and the skillion roof form a minor non-compliance is created by the extension of the wall to the underside of the roof the the raked ceiling following the line of the roof form.

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

  Comment:

  The building is of a contemporary style with a part flat and part pitched roof (skillion) form for the main dwelling house. Variation and visual interest (including light and ventilation) is provided by the clerestory and window spaces with balcony areas and changes in the wall alignment along the building outline that provides an innovative functional feature in the roof design at the rear. Impacts on privacy amenity (from extensive wall glazing) are assessed in detail under the heading *D8 Privacy* within this report.

Having regard to the above assessment, it is concluded that the proposed development, subject to conditions, is consistent with the aims and objectives of WLEP 2011, WDCP 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.

B3 Side Boundary Envelope

Description of non-compliance

The proposal does not comply with the side boundary envelope along the eastern elevation. The non-compliance is up to a 1.0m breach of the envelope.

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

  Comment:

  The proposal has a breach of the building envelope along the eastern side toward the north eastern corner associated with the living room and roof / clerestory window. The non-compliance is influenced by the crossfall of the site and the existing levels in that the floor levels are carried across to maintain consistent levels. The eastern side of the house is setback 2.5m in order to ensure the development does not over-dominate the side setback and to offset impacts of height and bulk.

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

  Comment:

  The non-compliance with the building envelope has a minor change to overshadowing however overall the building is below the maximum height limit. The proposal complies with minimum DCP requirements for solar access to adjacent land under *Part D2 Private Open Space.* The variation has been considered in terms of loss of light, solar access (compliance demonstrated) and privacy by the building design. The extent of non-compliance with the side boundary envelope does not contribute to any unreasonable loss of amenity or to unreasonable view loss. Measures to address privacy include internal blinds, wide setbacks, landscaping and room orientation / positioning.

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

  Comment:

  The proposal responds to the site by minimising excavation in utilising the existing building footprint and having an open undercroft area. The proposal also seeks to capitalise on the district easterly views in a manner similar to the existing house with a northerly outlook and views across the side boundary to the north-east and east (which includes ocean / coastal views).

Having regard to the above assessment, it is concluded that the proposed development, subject to conditions is consistent with the relevant objectives of WDCP and the objectives specified in section 5

(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance and maintain consistency with the requirement and objectives of the side boundary envelope control.

C4 Stormwater

The applicant was denied an easement to drain water the downslope neighbour and has therefore provided an alternative engineering solution of rainwater tanks and a runoff absorption / dispersal trench. The design is satisfactory, having been assessed by Council's Development Engineers and in consideration of Council's Water Management Policy, subject to the engineering conditions recommended.

D7 Views

Merit consideration

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

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

  Comment:

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

  1. Nature of the views affected

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

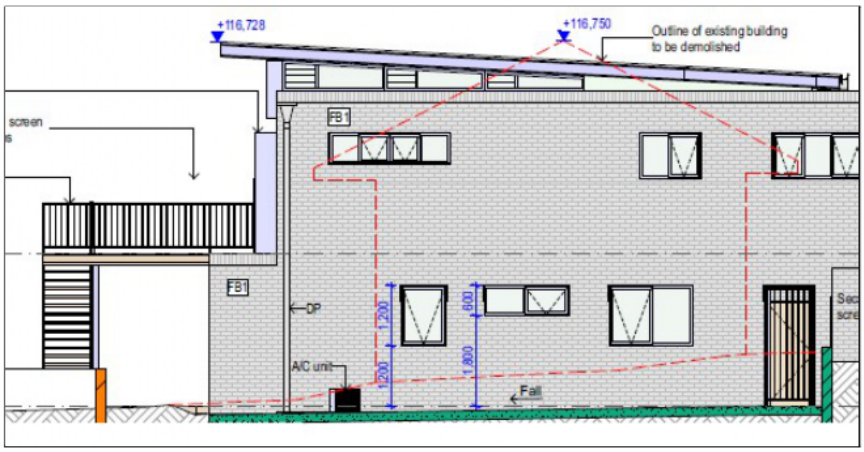
  Comment to Principle 1:

  The views affected include the ocean horizon and coastal fringe toward North Curl Curl Beach (across Brookvale) from Allambie Heights, and are shared to principally affect the property of No.31 Kirra Road west of the site where the view is at a narrow angle and overlooking across a side boundary. A site inspection was made of the site and in the vicinity of the site to evaluate the broad views available and it is noted the building configuration of No.31 Kirra Road does not afford a strong design to maximise the view very well from the living areas or verandah elements.

  However, a favourable view corridor toward the ocean and coastline exists across the rear of the subject site (generally East to NNE). Therefore, since an objection to view loss has been made a general assessment of the views affected and the relationship as to what those views available are, is identified including the impact of the current design proposed. In summary, the general focal interest is toward the northern end of Curl Curl beach, with the coastal interface, headland, and ocean horizon beyond.

This is a distant view and across the side boundary, but due to the elevated (hinterland) location of Kirra Road the view line is valued by the proposed development and adjacent properties, that enjoy the available view amenity and seek to take advantage of the north-eastern outlook.

- Figure 1: View across site at 60 degrees toward the ocean.



- Figure 2: Proposed building will position brick side wall toward rear of existing eave as shown in the elevation overlay.

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*".

<u>Comment to Principle 2:</u>

Ocean horizon views are obtained from the upper level (whereby higher topography permits this) and is generally a 'filtered' view through open canopy trees. In general, some views are partly obscured due to existing development at ground level and from other structures such as

fencing, telegraph poles, outbuildings and trees / vegetation. The views are across a side boundary due to the subdivision pattern, however these are valuable views because the dwellings are from an elevated hinterland ridgeline with the outlook across the Brookvale valley toward the ocean with the coastline forming a distinct feature of the view outlook. Site inspection shows that the principal views are gained from the upper storey with views, at an acute angle. From within No.31 Kirra Road the view is a standing view from the kitchen area, with standing and sitting view also from the adjacent study. The view from the front living room is limited and substantially obstructed by the existing building alignments and large canopy trees to the the north.

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 subject proposal is to be built over the existing building footprint but extends much further toward the rear and across the majority of the NE view corridor (viewed from No.31 Kirra Road. Views affected are from the connecting space between the kitchen and front living room (principally the study adjacent the kitchen area). The view is a distant view of the ocean horizon, however almost the entirety of this view will be obstructed by the proposed rearward position / alignment of the proposed dwelling. In particular, the brick side wall of the north western bedroom on the upper level and living area adjacent. Overall the view impact is considered to be severe but can be moderated by a minor change to the corresponding rear building alignment to be more sympathetic to share the same (existing) view corridor that the proposal will also benefit from.

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 element of the proposal causing the view impact is generally the greater rearward position of building footprint and upper level. A more skilful design response will easily maintain / share the view corridor enjoyed by No. 31 Kirra Road with no reduced development potential to the subject site. A minor adjustment to increase the rear setback (without any internal floor change) will thus reduce the desire for No.31 to encroach within their rear setback in order to 'recover' the existing ocean view. This would achieve a more skillful and accommodating design response with negligible change to other elements of landscaping, excavation and the like. The

external appearance of the building will remain unchanged except that it will be marginally closer to Kirra Road by 2 metres (with a broader 15m rear setback to the rear wall).

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

  Comment:

  The position of the building further toward the rear does not create an innovative design solution to improve the urban environment. The design creates a direct obstruction and northward movement into the view line that places a competing desire for No.31 Kirra Road or regain or recover the view corridor by extending their footprint adjacent or beyond that of the proposed deck / dwelling side wall of No.29 Kirra Road. In addition to this, the proposed northward location and elevated living area / large rear deck design raises privacy issues across the view corridor that adversely impacts private open space of No.27 Kirra Road.

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

  Comment:

  There are trees that are part of the view corridor and create 'filtered' views. Removal of trees to the north of the subject site do not affect the view as the principal view line is toward 60 to 90 degrees and not 37 to 49 degrees. The view at 39 degrees from No.31 Kirra Road is obscured for the most part due to dense vegetation north of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, subject to conditions, 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 large open glazed living area and wide elevated rear deck changes the status quo with regard to existing privacy afforded toward No.27 Kirra Road. Internal privacy is somewhat maintained with the use of internal blinds and wide setbacks for the deck area. The use of operable privacy screens and landscape planting for the eastern side of the building has limited effect in reducing privacy impacts created by No.29 Kirra Road, and screens if fixed screens are used for the outer deck area they will permanently block existing views across the site from No.31 Kirra Road.

  In order to effectively address this issue and maintain a level of acoustic and visual privacy, comparable to the current situation a wider setback to the rear boundary will align the each adjacent dwelling better and therefore reduce the offset impact, affording more

conventional and consistent visual and acoustic privacy. This issue of overlooking at the rear is also raised by No.16 Libya Crescent (to the north) in that the proposed building footprint and deck is much closer to the rear boundary than currently exists. A minor repositioning of the building (without any internal reduction of the proposed dwelling footprint) is recommended by conditions, in order to maintain the conventional average building alignment and protect neighbours privacy.

With regard to the secondary dwelling the visual and acoustic privacy is shielded by the ground floor walls and side boundary fencing (timber paling with additional screen planting proposed) and no issue is raised with respect to the Secondary dwelling.

Figure 1: Perspective view showing operable glazing and view line.

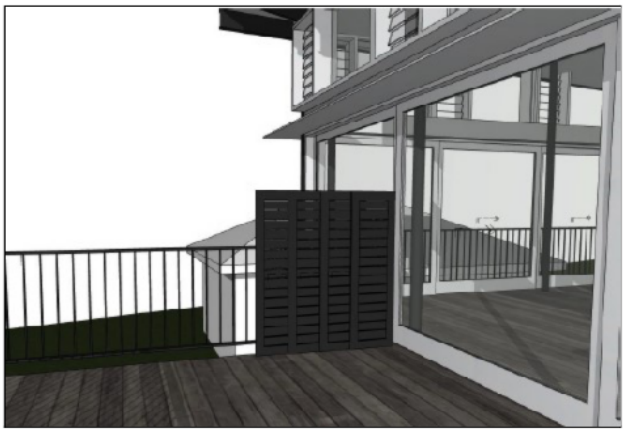


Figure 2: Illustrated proposal to include stackable privacy screens.

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

Comment:

The proposal does not 'improve' privacy to adjacent land and contributes to a substantial change in the current conventional arrangement of the adjacent buildings. The use of internal blinds only partly addresses the issue of the extensive rear glazing. The new open plan glazed elevated living area plus large deck has a direct outlook toward the east and north-east with

limited protection afforded to No.27 Kirra Road. In this regard, opportunities to "treat" this issue with screening devices and landscaping will then deny the coastal view line across the site from No.31 Kirra Road. Therefore, the inclusion of operable privacy screening for side of the rear deck, as shown with the supplementary details provided has partly addressed this issue but still has limited effect to ensure *design solutions to improve the urban environment*. A better linear alignment of the proposed dwelling, in sympathy to the current (existing) rear adjacent setbacks will afford a more consistent response and a practical solution to improve the urban environment with minimal impact.

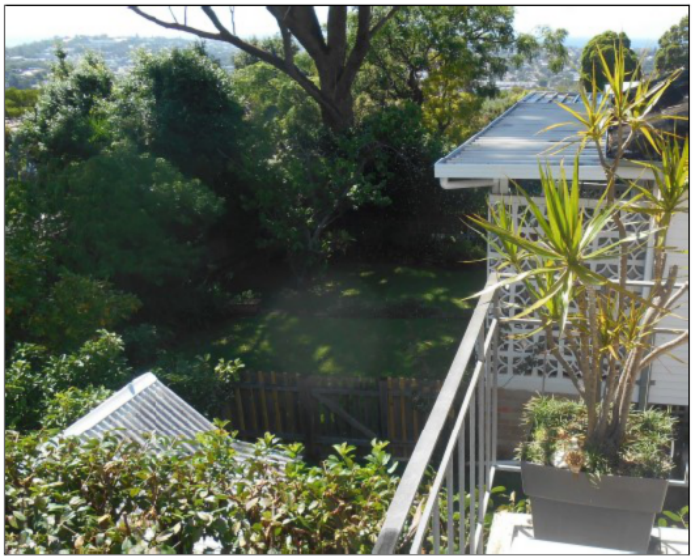


Figure: Upper floor overlooking to the east from upper level into adjacent private open space of No.27 Kirra Road. Proposed new dwelling has corner of living room windows approximate position of existing corner balcony (foreground) with deck to left (north) overlooking the eastern boundary.

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

  Comment:

  The proposal has appropriate design for personal and property security for a low density residential environment, including security for the Secondary dwelling.

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

Issues regarding building bulk and streetscape appearance were considered with the pre-lodgement design and the applicant has addressed this issue by the the inclusion of a brick "soldier course" introduced to the top parapet wall. Three different colour variations of brick are used to subtly define different wall plane elements and timber vertical wall cladding to included further articulation, texture and variation and define the front entry. Landscaping and window casements are included to enhance balcony and wall elements. An additional window included to the western side elevation and the front section of the building was amended to an "L" shape which has improved the articulated appearance of the dwelling's brick wall mass when viewed from Kirra Road.

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

Comment:

The building is lower than the street and has a wide landscape buffer to Kirra Road that with screen part of the lower storey area. The rear section of the dwelling is wider with the bedrooms toward the southern road frontage in order to take advantage of the district views at the rear and integrate with the open plan living / garden area of the site. In this regard the proposal is consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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 $20,504 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,050,400.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

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

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

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

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

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

- Privacy (including acoustic and visual) whereby the open plan top floor living area and deck were raised as a principal concern for No.27 Kirra Road and No.19 Libya Crescent. The most effective way to address this issue is by a minor increase in the rear setback for the dwelling and deck (with the internal floor plan unchanged) to maintain a more consistent alignment with the adjacent dwellings, with a marginally closer setback to the street for the proposal.

- Views are addressed with a measured response due to the associated impacts that also assists to maintain privacy but minimised the use extensive screens, landscaping and the like that would effectively block the view and impact the amenity of the view corridor currently benefiting both the site and No.31 Kirra Road.

In conclusion, the principal issues in the assessment were unresolved by amended plans, however the inclusion of sliding privacy screens on the rear deck will assist in maintaining views and reducing the direct overlooking from the upper deck area. However, in order to minimise the impact on the amenity of adjacent property a minor adjustment to the building footprint position is recommended to maintain consistency with the objectives and requirements of *Part D7 Views* and *Part D8 Privacy* of the Warringah Development Control Plan 2011.

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 DA2021/0046 for Demolition works and construction of a dwelling house including secondary dwelling on land at Lot 5 DP 114000, 29 Kirra Road, 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**
DA04 Site Plan	19.3.2021	MM & J Architects
DA06 Ground Floor Plan	19.3.2021	MM & J Architects
DA08 First Floor Plan	19.3.2021	MM & J Architects
DA09 Sections 01	19.3.2021	MM & J Architects
DA11 Sections 03	19.3.2021	MM & J Architects
DA12 North and South Elevations	19.3.2021	MM & J Architects
DA13 East and West Elevations	19.3.2021	MM & J Architects
DA20 Privacy Screen Elevation	19.3.2021	MM & J Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
D01 Stormwater General Notes	11.1.2020	NB Consulting Engineers
D02 Stormwater Management Drainage Plan Sheet 1	11.1.2020	NB Consulting Engineers
D03 Stormwater Management Drainage Plan Sheet 2	11.1.2020	NB Consulting Engineers
D04 Stormwater Management Drainage Plan Sheet 3	11.1.2020	NB Consulting Engineers
D05 Sections and Details Sheet 1	11.1.2020	NB Consulting Engineers
D05 Sections and Details Sheet 2	11.1.2020	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Basix Certificate 1165775M	23.12.2020	MM & J Architects
Geotechnical Investigation 5947-G1	23.3.2020	AssetGeoEnviro

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**

LC-01 Landscape Concept Plan*	9.11.2020	Stone Rose Landscapes

Landscaping plan to be updated to correspond with conditions of consent.

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	11.1.2021	MM & J Architects

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

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

2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of

the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

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

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of $20,504.00 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 $2,050,400.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Pier Footing Design Near Trees to be Retained**
Pier footing structural layout plans for the external works including the timber ramp at the rear of the property shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer. The Arborist shall review, comment, recommend design revision as required and approve the pier footing layout, to ensure the locations of piers will be manageable in terms of tree protection measures.

The Arborist shall submit certification to the Certifying Authority, that the locations of the pier footings are accepted. The agreed pier footing structural layout plans shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

7. **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 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:
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.

8. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- The building footprint is to be positioned closer to Kirra Road to achieve a broader rear setback minimum of 15 metres (m) for the rear of the dwelling and a minimum 11.3m rear setback for the elevated timber deck. This is to be measured from mid-point of the rear boundary. No reduction / change to internal floor plan or side setbacks is required with the front setback being reduced to approximately 10 metres.

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 (including adverse acoustic privacy, overlooking and view amenity) upon surrounding land.

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

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

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

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

10. **Change of Building Class**

The new building that is proposed to be constructed will result in a classification of a Class 2 building and will be required to comply with Parts C, D, E & F (specifically sound transmission, fire separation and protection of openings) of the Building Code of Australia.
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 fire safety and for building occupant safety

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 NB Consulting Engineering, Job number 200246, dated 11/1/2020. 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.

13. **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.

14. **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

15. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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:
- Work Health and Safety Act;
- Work Health and Safety Regulation;

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

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

20. **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.

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. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/5 EL 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.

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

23. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:
i) 50% of proposed trees shall be locally native in order to enhance indigenous vegetation in the area. Proposed alternative species include: *Banksia serrata, Callicoma serratifolia, Ceratopetalum apetalum* or *Tristaniopsis laurina,*
ii) substitute the proposed *Rhaphiolepis* with a locally native alternative. Suggested alternatives include: *Banksia spinulosa, Gervillea sericea* or alternatively *Westringia fruticosa* (as proposed elsewhere on site).

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.

Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

Native shrub and tree planting species shall be selected from Council's list, specifically the *Native Plant Species Guide - Frenchs Forest Ward*:
www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.

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. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
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 restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of 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 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 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 the on-site stormwater disposal system is maintained to an appropriate operational standard.

26. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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.

For all new on slab landscape works, establish an on-going landscape maintenance plan that shall be submitted to the Certifying Authority that aims to monitor and replenish soil levels annually 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.

BASIX INFORMATION

Element	Description	Location
External Walls	Brick Veneer with R2.7 insulation added	as per plans
	FC sheet clad plasterboard lined framing with R2.7 added insulation	as per plans
	Cavity masonry and masonry	garage as per plans
Internal Walls	plasterboard on frame with R2.5 insulation added	entry/garage walls as per plans
	plasterboard on frame	as per plans
	brick veneer	as per plans
	cavity brick	entry/garage walls as per plans
Floors	Concrete slab on R 1.0 insulation	ground level to house and garage
	Concrete slab on ground	granny flat
	timber on timber frame with R2.5 insulation under	first level
Ceilings	plasterboard with R3.5 min. bulk insulation	where under roof
Roof	metal sheet on R1.0 Anticon blanket with 25mm air gap un der downward facing reflective surface.	
Glazing all standard aluminium framed	Single clear to achieve AFRC rating U ≤ 6.7 and SHGC 0.57 ± 5%	W02, W06, W13, W14
	Single Low E to achieve AFRC rating U ≤ 5.4 and SHGC 0.58 ± 5%	Louvre portion of all high level glazing
	Double Low E to achieve AFRC rating U ≤ 4.3 and SHGC 0.47 ± 5%	W01,W03,W05,W07,W10,W11,W12, W15,W16,W17,W18,
	Double Low E to achieve AFRC rating U ≤ 4.3 and SHGC 0.53 ± 5%	W22, W23
	Double Low E to achieve AFRC rating U ≤ 4.1 and SHGC 0.52 ± 5%	W04, W08, W24, W29 and the fixed portion of all high level glazing
Skylights	none	
Lighting	All recessed downlights to be LED fixtures which seal against air leakage	

29 KIRRA ROAD, ALLAMBIE HEIGHTS

ALTERATIONS & ADDITIONS TO DETACHED DWELLING

DEVELOPMENT APPLICATION

ROSERINA MURACE

REVISION G
ISSUE DATE: 19/3/21

LEGEND

- BOUNDARY LINE
- EXISTING STRUCTURE TO REMAIN
- EXISTING STRUCTURE TO BE DEMOLISHED
- BRICK
- TIMBER STRUCTURE
- CONCRETE STRUCTURE
- STEEL STRUCTURE
- CONCRETE OR RENDER FINISH
- TIMBER FINISH
- SANDSTONE FINISH
- GLAZING

mm+j architects

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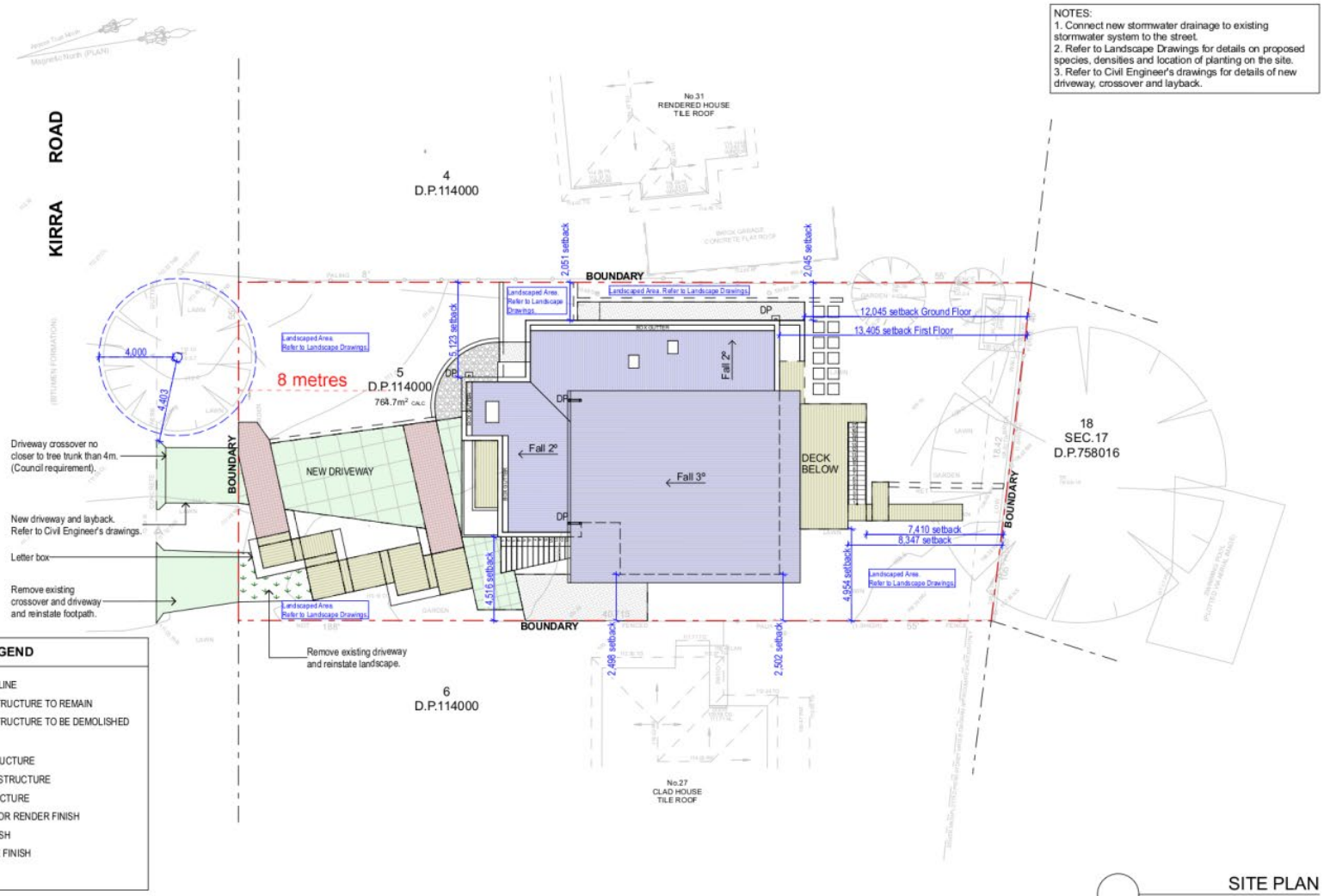
9929 1279 | admin@mmjarchitects.com.au

ISSUE DATE: 19/3/21

REF	DRAWING TITLE	SCALE	REV.
EX01	EXISTING SITE PLAN	1:200	A
EX02	EXISTING GROUND FLOOR PLAN	1:100	A
EX03	EXISTING FIRST FLOOR PLAN	1:100	A
EX04	EXISTING SECTIONS	1:100	A
EX05	EXISTING NORTH & SOUTH ELEVATIONS	1:100	A
EX06	EXISTING EAST & WEST ELEVATIONS	1:100	A
EX07	EXISTING 3D EXTERNAL VIEWS	NTS	A
DA01	SITE ANALYSIS PLAN	NTS	A
DA02	AREA CALCULATIONS	1:200	A
DA03	EXCAVATION & FILL / SEDIMENT & EROSION CTRL. PLAN	1:200	A
DA04	SITE PLAN	1:200	C
DA05	DEMOLITION PLAN	1:100	A
DA06	GROUND FLOOR PLAN	1:100	F
DA07	GROUND FLOOR PLAN - DRIVEWAY	1:100	A
DA08	FIRST FLOOR PLAN	1:100, 1:20	G
DA09	SECTIONS 01	1:100	G
DA10	SECTIONS 02	1:100	C
DA11	SECTIONS 03	1:100	D
DA12	NORTH & SOUTH ELEVATIONS	1:100	B
DA13	EAST & WEST ELEVATIONS	1:100	E
DA14	3D EXTERNAL VIEWS	NTS	F
DA15	ENTRY VIEWS	NTS	E
DA16	3D VIEW FROM EAST - EXISTING & PROPOSED	NTS	E
DA17	3D VIEWS FROM STREET	NTS	E
DA18	NEIGHBOUR - VIEW CORRIDOR	1:300	A
DA19	EXISTING VIEWS WITH PRIVACY SCREEN FROM No. 31	NTS	A
DA20	REAR DECK - PRIVACY SCREEN - FLOOR PLAN	1:20	B
DA21	EAST PRIVACY SCREEN - 3D VIEWS FROM DECK	NTS	B
DA22	EAST PRIVACY SCREEN - 3D VIEWS FROM No. 27	NTS	B
DA23	ASSUMED VIEWS FROM No. 31 INSIDE	NTS	A
DA24	AREA CALCULATIONS FOR CLIENT REFERENCE	1:200	A
DA25	3D VIEWS WITH HEIGHT LIMIT	NTS	D
DA26	No. 31 VIEW ANALYSIS 01	NTS	B

NOTES:
1. Connect new stormwater drainage to existing stormwater system to the street.
2. Refer to Landscape Drawings for details on proposed species, densities and location of planting on the site.
3. Refer to Civil Engineer's drawings for details of new driveway, crossover and layback.



LEGEND

- BOUNDARY LINE
- EXISTING STRUCTURE TO REMAIN
- EXISTING STRUCTURE TO BE DEMOLISHED
- BRICK
- TIMBER STRUCTURE
- CONCRETE STRUCTURE
- STEEL STRUCTURE
- CONCRETE OR RENDER FINISH
- TIMBER FINISH
- SANDSTONE FINISH
- GLAZING

SITE PLAN
1:200

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DEVELOPMENT APPLICATION

REV	DATE	DESCRIPTION
A	23.12.2020	Development Application Issue
B	10.03.2021	Relocate proposed dwelling 2m. to South from original DA - Maximise height limit
C	19.03.2021	Issue for client review

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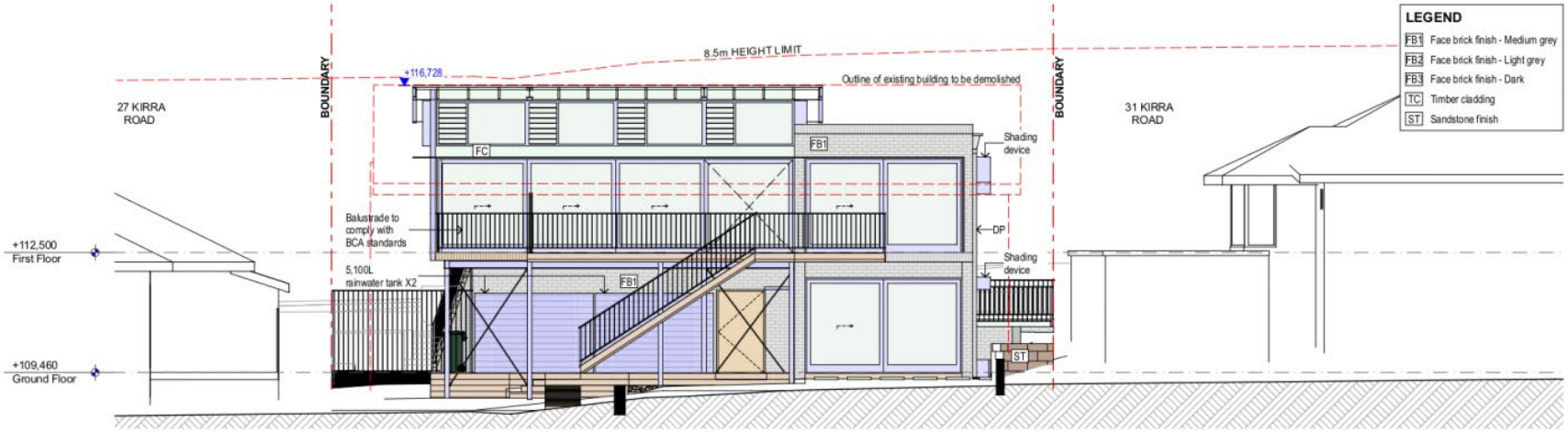
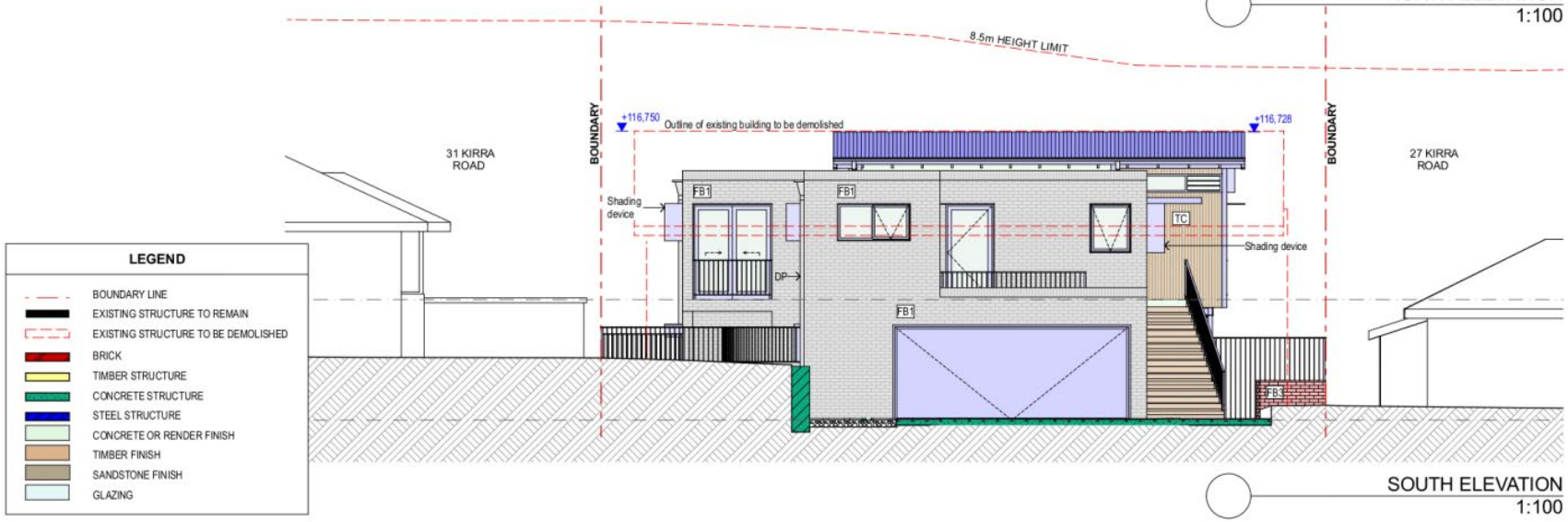
CLIENTS: ROSERINA MURACE
PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING
29 KIRRA ROAD, ALLAMBIE HEIGHTS
TITLE: SITE PLAN

SCALE: 1:200
DRAWN: VAC
DATE: 19/3/21
JOB NO: **1941**
DRAWING NO: DA04
ISSUE: C

1941 Kirra 29_AC21_DA_Option 2_210311.pln



NORTH ELEVATION
1:100



SOUTH ELEVATION
1:100

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DEVELOPMENT APPLICATION

REV	DATE	DESCRIPTION
A	23.12.2020	Development Application Issue
B	19.03.2021	Issue for client review

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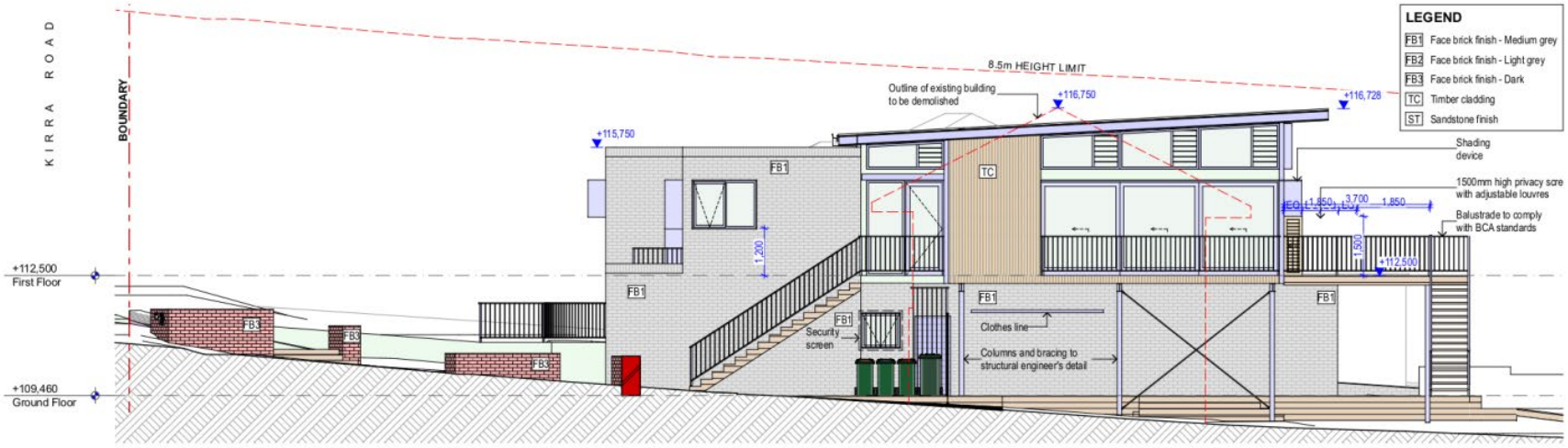
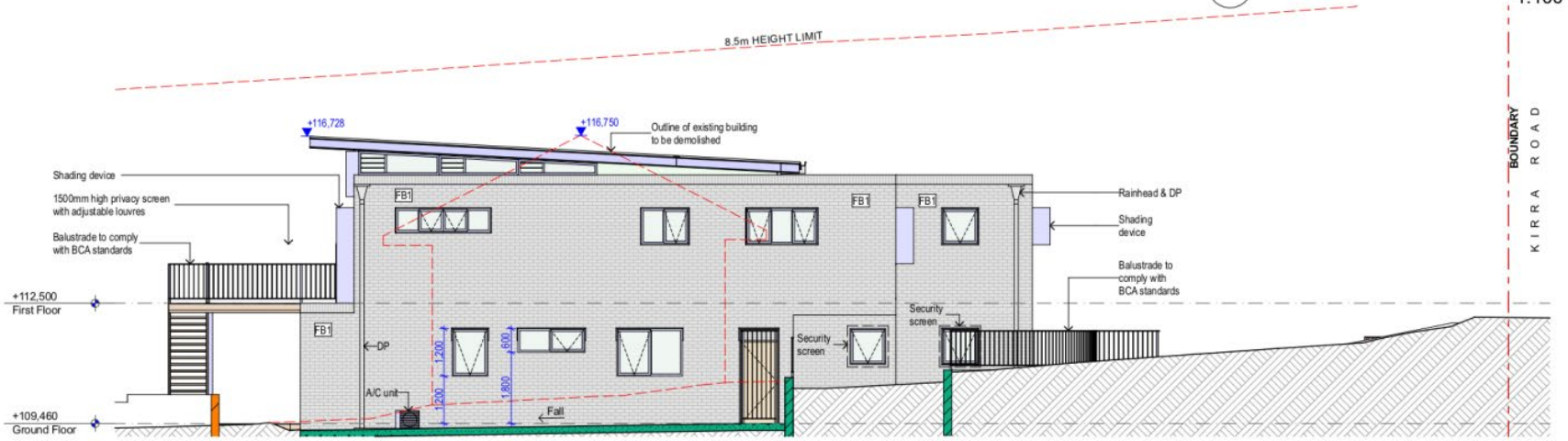
CLIENTS: ROSERINA MURACE
PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING
29 KIRRA ROAD, ALLAMBIE HEIGHTS
TITLE: NORTH & SOUTH ELEVATIONS

SCALE: 1:100
DRAWN: VAC
DATE: 19/3/21
JOB NO: **1941**
DRAWING NO: DA12
ISSUE: B

1941 Kirra 29_AC21_DA_Option 2_210311.pln



EAST ELEVATION
1:100



WEST ELEVATION
1:100

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	B	17.02.2021	Privacy screen added
	C	04.03.2021	Relocate proposed dwelling 4m. to South - Maximise height limit
	D	10.03.2021	Relocate proposed dwelling 2m. to South from original DA - Maximise height limit
	E	19.03.2021	Issue for client review

DEVELOPMENT APPLICATION

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CLIENTS: ROSERINA MURACE
PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING
TITLE: **29 KIRRA ROAD, ALLAMBIE HEIGHTS**
EAST & WEST ELEVATIONS

SCALE: 1:100
DRAWN: VAC
DATE: 19/3/21
JOB NO: **1941**
DRAWING NO: DA13
ISSUE: E

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DEVELOPMENT APPLICATION

REV	DATE	DESCRIPTION
A	23.12.2020	Development Application Issue
B	17.02.2021	Privacy screen added
C	03.03.2021	Suggested alternative for client review
D	10.03.2021	Alternative design - Option 2
E	11.03.2021	Increase size of Laundry GF and Bathroom FF
F	19.03.2021	Issue for client review

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CLIENTS: ROSERINA MURACE
PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING
29 KIRRA ROAD, ALLAMBIE HEIGHTS
TITLE: 3D EXTERNAL VIEWS

SCALE:
DRAWN: VAC
DATE: 19/3/21
JOB NO: **1941**
DRAWING NO: DA14
ISSUE: F

1941 Kirra 29_AC21_DA_Option 2_210311.pln

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3D VIEW FROM STREET - FRONT

3D VIEW FROM STREET - SOUTH-EAST

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DEVELOPMENT APPLICATION

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CLIENTS: ROSERINA MURACE
PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING
29 KIRRA ROAD, ALLAMBIE HEIGHTS
TITLE: 3D VIEWS FROM STREET

SCALE:
DRAWN: VAC
DATE: 19/3/21
JOB NO: **1941**
DRAWING NO: DA17
ISSUE: E

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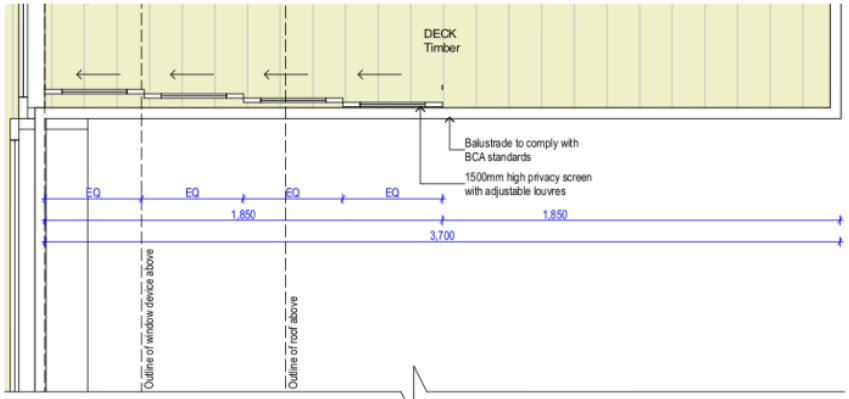
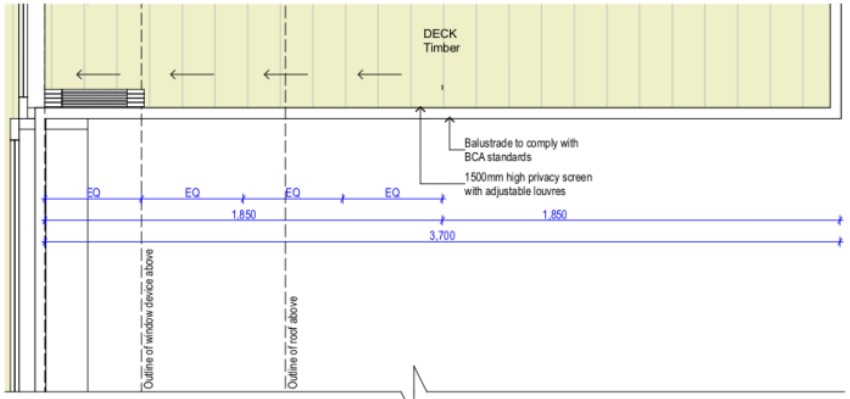
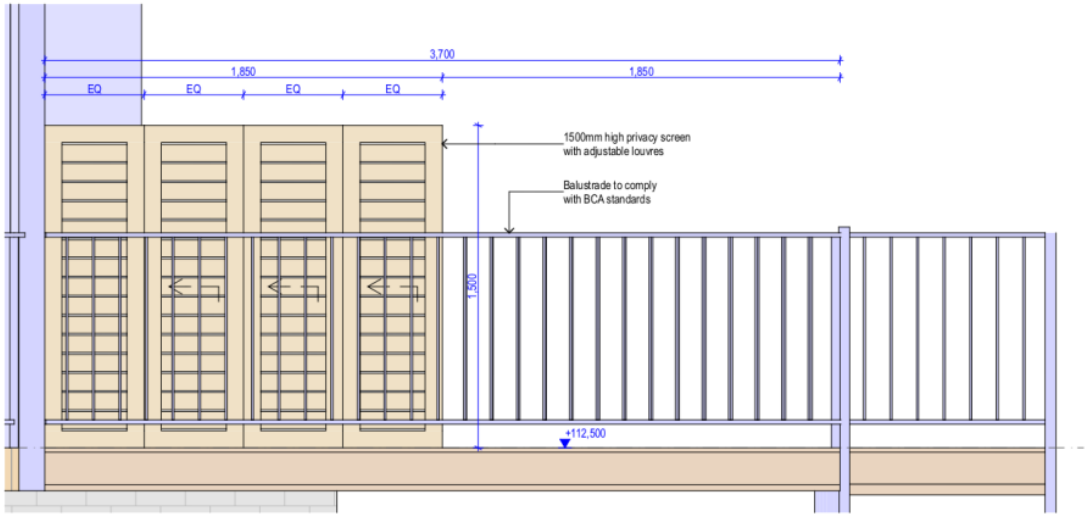


PLAN - SCREEN CLOSED
1:20



PLAN - SCREEN OPEN
1:20



E PRIVACY SCREEN - ELEVATION
1:20

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DEVELOPMENT APPLICATION

REV	DATE	DESCRIPTION
A	17.02.2021	Privacy screen added
B	19.03.2021	Issue for client review

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CLIENTS: ROSERINA MURACE
PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING
29 KIRRA ROAD, ALLAMBIE HEIGHTS
TITLE: REAR DECK - PRIVACY SCREEN - FLOOR PLAN

SCALE: 1:20
DRAWN: VAC
DATE: 19/3/21
JOB NO: **1941**
DRAWING NO: DA20
ISSUE: B

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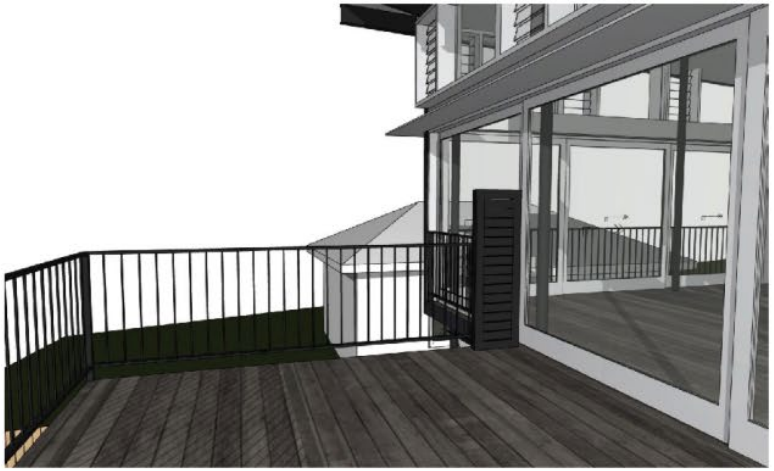
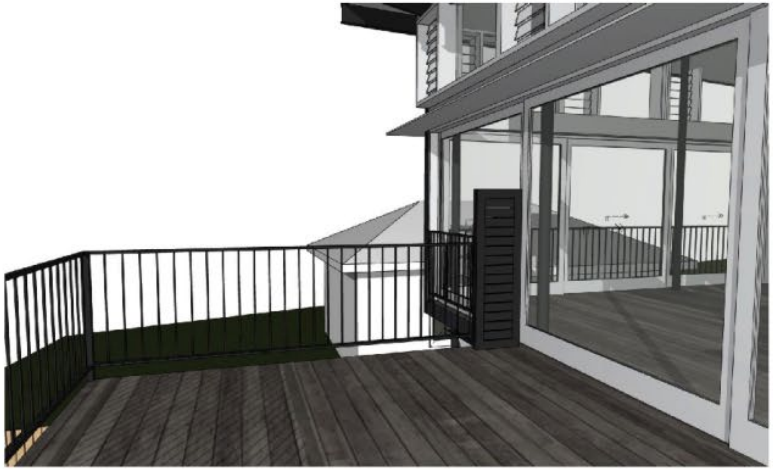


PRIVACY SCREEN FROM DECK - Screen closed

PRIVACY SCREEN FROM DECK - Screen 1/4 open

PRIVACY SCREEN FROM DECK - Screen 1/2 open



PRIVACY SCREEN FROM DECK - Screen 3/4 open

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DEVELOPMENT APPLICATION

REV	DATE	DESCRIPTION
A	17.02.2021	Privacy screen added
B	19.03.2021	Issue for client review

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CLIENTS: ROSERINA MURACE
PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING
29 KIRRA ROAD, ALLAMBIE HEIGHTS
TITLE: EAST PRIVACY SCREEN - 3D VIEWS FROM DECK

SCALE:
DRAWN: VAC
DATE: 19/3/21
JOB NO: **1941**
DRAWING NO: DA21
ISSUE: B

1941 Kirra 29_AC21_DA_Option 2_210311.pln

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ITEM 3.4	**MOD2021/0086 - 95 GURNEY CRESCENT, SEAFORTH - MODIFICATION OF DEVELOPMENT CONSENT DA2019/1463 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Anna Williams**
TRIM FILE REF	**2021/317568**
ATTACHMENTS	**1 Assessment Report** **2 Site Plans & 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** Mod2021/0086 for modification of Development Consent DA2019/1463 granted for alterations and additions to a dwelling house on land at Lot 44 DP 11214, 95 Gurney Crescent, Seaforth, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0086

Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 44 DP 11214, 95 Gurney Crescent SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2019/1463 granted for 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:	Narelle Gaye Van Gemert John Steven Ball
Applicant:	Narelle Gaye Van Gemert

Application Lodged:	16/03/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/03/2021 to 06/04/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The Modification Application seeks to modify conditions of Development Consent DA2019/1463, which was approved by the Development Determination Panel (DDP) on 12 August 2020. The application is made under the provisions of section 4.55(2)of the EP& A Act, and as such, the application is referred to the DDP for determination.

With the exception of the requested deletion of a condition requiring the imposition of privacy screens, the consent authority can be satisfied that the modified development is substantially the same as that which was originally approved, and that the modified development will remain consistent with the objectives of MLEP 2013 and MDCP 2013. Accordingly, based on the detailed assessment contained in

this report, it is recommended that the application be approved in part, subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The modification proposes the following amendments to Development Consent DA2019/1463:

- **Amend Condition 1 a) and c) - Approved Plans and Supporting Documentation**

  a. Amend Approved Plans Condition 1a) to show both Structural Floor Level (SFL) and Finished Floor Level (FFL).
  b. Amend Approved Plans Condition 1c) to delete the below and replace with updated landscape plan.

- **Delete Condition 9 - Amendments to the approved plans, which reads as follows:**

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

  - *Level 4 - The northern privacy screen is to be extended by 2m to the west.*
  - *Level 3 - The northern privacy screen is to be extended by 2m to the west.*
  - *Level 2 - A privacy screen is to be installed along the northern elevation of the walkway connecting the balcony and external stairs (the screen is to be the same height and materials as proposed on levels 3 and 4).*

  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.

- **Delete Condition 16 - New Landscaping, which reads as follows:**

  Any new landscaping is to be composed entirely of species from the Sydney Coastal Sandstone Foreshore Forest Plan Community Type (PCT). A species list is available from Council upon request. Landscape Plans are to be prepared/amended accordingly and compliance with this condition is to be certified in writing by a qualified landscape architect, horticulturalist or ecologist and evidence provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

  Reason: To achieve compliance with Manly LEP Clause 6.5 (Terrestrial Biodiversity).

  Condition 16 is to be deleted as the landscape plan has been amended to remove the section below the retaining wall as this is covered by a separately approved development application.

- **Delete Condition 35 - Landscape completion certificate, which reads as follows:**

  a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape consultant/horticulturalist or ecologist shall be submitted to the Certifying Authority, certifying

that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.
b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape consultant/horticulturalist or ecologist shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan and inclusive of any conditions of consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

The Applicant wishes to delete condition 35 to allow for the occupants to move into the dwelling and then complete the works whilst they are on site. It should be noted majority of the landscaping works for the site have been approved under a separate development application.

- **Delete Condition 38 - Required Planting**

  Trees, shrubs and groundcovers shall be planted in accordance with the Landscape Plan Drawing No. A106 B dated 29/6/20 prepared by Mark Hurcum Design Practice.

  Reason: To maintain environmental amenity.

  The Applicant wishes to delete the requirement for this to be done prior to the Occupation Certificate.

- **Amend Condition 40 - Garbage and Recycling Facilities, which reads as follows:**

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

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

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

  The Applicant wishes to amend Condition 40 to remove reference to the works 'any interim' to allow for the occupants to move into the dwelling and then complete the works whilst they are on site.

- **Amend Condition 41 - House/Building Number, which reads as follows:**

  House/building number is to be affixed to the building to be readily visible from the public domain.

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

  The Applicant wishes to amend Condition 41 to remove reference to the works 'any interim' to allow for the occupants to move into the dwelling and then complete the works whilst they are on site.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.2 Privacy and Security

SITE DESCRIPTION

Property Description:	Lot 44 DP 11214 , 95 Gurney Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Gurney Crescent. The site is irregular in shape with a frontage of 12.6m along Gurney Crescent and a depth of 48.265m along the northern side boundary and 50.205m along the southern side boundary. The site has a surveyed area of 594.4m^2. The site is located within he E3 Environmental Management zone and accommodates a partially constructed dwelling house. The site is very steep and has a slope of approximately 53.6% (11.9m) within the building footprint. The site has limited landscaping which is contained to the rear of the property fronting the waterway. **Detailed Description of Adjoining/Surrounding Development**

	Adjoining and surrounding development is characterised by double, three and four storey dwellings with landscaping and associated outbuildings and structures.

Map:

SITE HISTORY

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

The following relevant applications have been assessed and approved by Council:

- Development Application 2019/1463 for alterations and additions to a dwelling house approved by Northern Beaches Development Determination Panel on 12 August 2020.
- Section 4.55(1) Modification Mod2020/0502 to correct an error in condition 1 of DA2019/1463 approved by Council staff under delegated authority on 2 October 2020.
- Development Application DA2020/1670 for alterations and additions to a dwelling house including landscape works was approved by Council staff under delegated authority on 15 February 2021.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/1463 for the following reasons: • There are no additional physical works proposed as part of the modification application. • The proposal seeks to amend construction time frames to be able to move in and complete the landscaping while they are living on site. Separate DA2020/1670 has approved landscaping works and will ensure they are conducted in accordance with the stamped plans. The works are considered to be substantially the same as approved. • The changes to the conditions do not radically alter the outcome.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/1463 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2011 and Manly Development Control Plan.
(d) it has considered any submissions made	See discussion on “Notification & Submissions

Section 4.55 (2) - Other Modifications	Comments
concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) 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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in

Section 4.15 'Matters for Consideration'	Comments
	the original consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. 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 in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. 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.
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	(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. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and

Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the original Development Application DA2019/1463 (prepared by Bush Fire Planning Services, dated 22 November 2019). The assessment and findings from the original Development Application are applicable to this modification application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/03/2021 to 06/04/2021 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:
Ms Meredith Ellen Symons	97 Gurney Crescent SEAFORTH NSW 2092

The matters raised within the submissions are addressed as follows:

- **Privacy**

  The submission raises concerns that the removal of Condition 9 as requested by the Applicant in this modification application will result in significant privacy loss.

  Condition 9 was placed on the development consent to ensure a reasonable level of privacy will be maintained. Given there are no changes to the built form as approved or the site conditions it is considered Condition 9 is still applicable to the development and will not be deleted as part of this modification application.

- **Garage Room**

  The submission raises concerns that the imposition of a louvred wall from the garbage room immediately adjacent to their main private open space decks and windows will cause amenity loss.

  The louvred wall along the northern wall of the garbage room located within the garage adjoining No. 97 Gurney Crescent was approved in DA2019/1463 (as shown in Figure 1). There are no changes to the garbage room as part of this modification application (as shown in Figure 2).

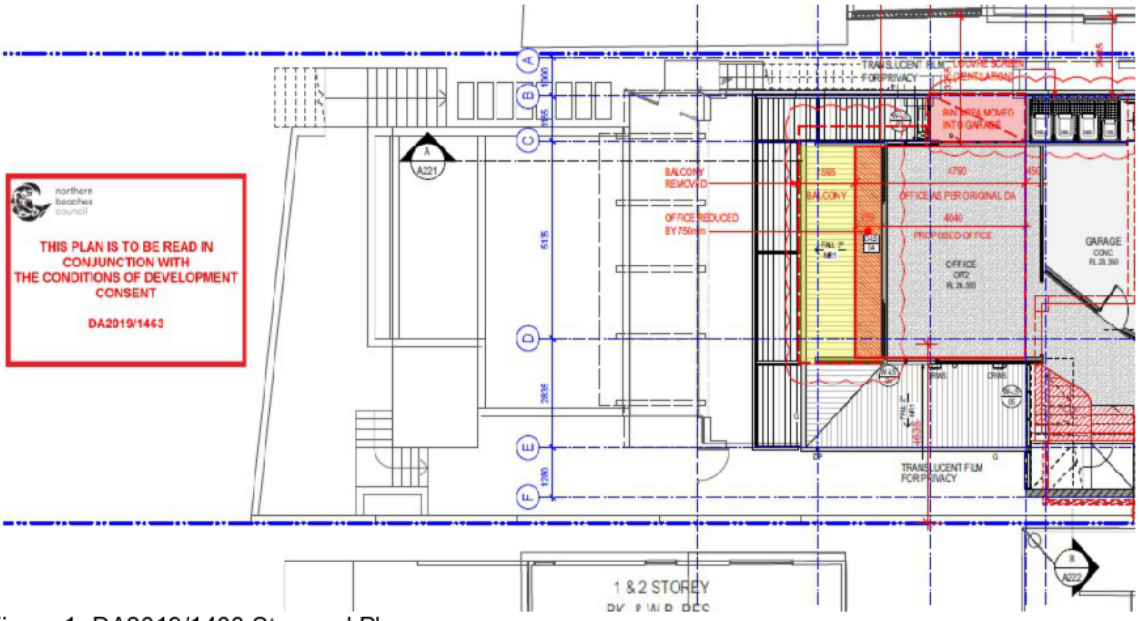


Figure 1: DA2019/1463 Stamped Plans

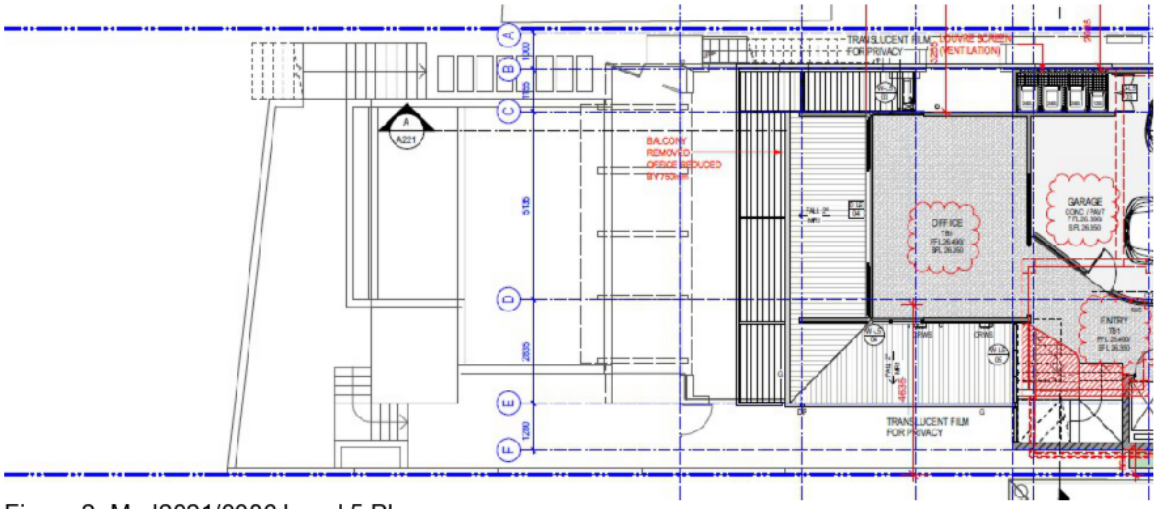


Figure 2: Mod2021/0086 Level 5 Plan

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported with conditions.** The application for modification to development consent DA2019/1463 includes the following landscape matters: • deletion of Landscape Plan and replacement with updated Landscape Plan in Condition 1 Approved Plans and Supporting Documentation • deletion of Condition 35 and Condition 38 regarding the remaining landscape works

Internal Referral Body	Comments
	Condition 16 of development consent DA2019/1463 is imposed by and thus shall be considered by Council's Natural Environmental Referral Response - Biodiversity. The modification application requests that conditions for landscape works to be completed prior to Occupation Certificate be removed. Advice is provided that under Part 6 of the EPA Act, staged occupation of a building is still permitted. The term 'interim' and 'final' occupation certificates no longer exist. Part 6 of the EP&A Act commenced on 1 December 2019. Certification can only be 'final' with respect to completed works. Under Part 6 staged occupation is still permitted. As a new development is constructed, parts may be completed and become suitable for occupancy before the overall development is finished. To accommodate this, the EP&A Act allows for an Occupation Certificate to be issued for part of a partially completed works. This is a matter for the Certifying Authority to provide Occupation Certificates under the direction of Part 6 of the EPA Act. Once the development and all associated works are complete, an Occupation Certificate for the remaining parts of the works must be obtained. This Occupation Certificate is required to demonstrate that the works and/or change of use complies with the associated development consent, and the remaining conditions of that consent have been met. Landscape Referral raise no objections to the modification application, and require Occupation Certificate for the landscape works. DA2019/1463 Condition 35 and Condition 38 are to be removed and replaced in the modification approval with the condition under Landscape Completion.
NECC (Bushland and Biodiversity)	**Supported without conditions.** Council's Natural Environment Unit - Biodiversity referral team has no objections to the proposed modification. The following condition (Condition 16 ; DA2019/1463) imposed by the Natural Environment Unit - Biodiversity is requested to be deleted: ***New landscaping*** *Any new landscaping is to be composed entirely of species from the Sydney Coastal Sandstone Foreshore Forest Plant Community Type (PCT). A species list is available from Council upon request. Landscape Plans are to be prepared/amended accordingly and compliance with this condition is to be certified in writing by a qualified landscape architect, horticulturalist or ecologist and evidence provided to the Principal Certifying Authority prior to issue of the Construction*

Internal Referral Body	Comments
	Certificate. *Reason: To achieve compliance with Manly LEP Clause 6.5 (Terrestrial Biodiversity).* The primary focus of this condition was the western vegetated portion of the site. As the western portion of this site is still to be re-vegetated to the same standard detailed in this condition (under separate DA : DA2020/1670), the Natural Environment Unit - Biodiversity have no objections to its deletion in regard to the eastern portion of the site.
NECC (Coast and Catchments)	**Supported without conditions.** The modification application has been assessed in consideration of the *Coastal Management Act 2016*, 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. The subject site has been identified as being within the coastal zone and included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” in Manly LEP 2013. Proposed modifications, in general, support the requirements of the relevant statutory documents

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 (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment:
The site is identified within the 'Foreshores and Waterways' area pursuant to the SREP (Sydney Harbour Catchment) 2005. Therefore, this clause does not apply to the proposed development.

(2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

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

Comment:
The modification application has been reviewed by Council's Coastal Officer and is supported by the consent authority.

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 site is identified within the 'Foreshores and Waterways' area pursuant to the SREP (Sydney Harbour Catchment) 2005. Therefore, this clause does not apply to the proposed development.

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

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

Comment:
Council's Coastal Officer has reviewed the proposed development and raised no objections and no additional conditions. Therefore Council can be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on the site or adjoining lands.

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

Compliance Assessment

Clause	Compliance with Requirements
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

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
4.1.5 Open Space and Landscaping	N/A	N/A
4.1.8 Development on Sloping Sites	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The proposed modification requests to remove the below Condition requiring additional privacy screens.

Condition 9. Amendments to the approved plans

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

- *Level 4 - The northern privacy screen is to be extended by 2m to the west.*
- *Level 3 - The northern privacy screen is to be extended by 2m to the west.*
- *Level 2 - A privacy screen is to be installed along the northern elevation of the walkway connecting the balcony and external stairs.*

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.

The site conditions or proposed development remain the same as the approved DA2019/1463 and accordingly the Condition requiring additional privacy screening is still relevant to the approved development. The proposal was found to present no unreasonable privacy impacts subject to condition (s) as recommended.

Removal of the privacy screens required by Council would result in unreasonable privacy impacts, hence the request to delete this condition is not supported.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

- 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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0086 for Modification of Development Consent DA2019/1463 granted for alterations and additions to a dwelling house on land at Lot 44 DP 11214,95 Gurney Crescent, SEAFORTH, subject to the conditions printed below:

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

The development must be carried out in compliance (except as amended by any other condition of

consent) with the plans and document referenced in Condition 1, as modified by the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
A100 Roof Level Plan Rev I	23/02/2021	Mark Hurcum Design Practice
A101 Level 5 Plan Rev J	23/02/2021	Mark Hurcum Design Practice
A102 Level 4 Plan Rev J	23/02/2021	Mark Hurcum Design Practice
A103 Level 3 Plan Rev J	23/02/2021	Mark Hurcum Design Practice
A102 Level 2 Plan Rev J	24/02/2021	Mark Hurcum Design Practice
A105 Level 1 Plan Rev L	24/02/2021	Mark Hurcum Design Practice
A201 North Elevation Rev F	23/02/2021	Mark Hurcum Design Practice
A202 South Elevation Rev E	23/02/2021	Mark Hurcum Design Practice
A203 East and West Elevation Rev G	23/02/2021	Mark Hurcum Design Practice
A221 Section A-A Rev D	23/02/2021	Mark Hurcum Design Practice
A222 Section B-B Rev D	23/02/2021	Mark Hurcum Design Practice

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
Landscape Plan Rev E	December 2019	Mark Hurcum Design Practice

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

B. Delete Condition 16 - New Landscaping which reads as follows:

Any new landscaping is to be composed entirely of species from the Sydney Coastal Sandstone Foreshore Forest Plant Community Type (PCT). A species list is available from Council upon request. Landscape Plans are to be prepared/amended accordingly and compliance with this condition is to be certified in writing by a qualified landscape architect, horticulturalist or ecologist and evidence provided to the Principle Certifying Authority prior to the issue of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

C. Delete Condition 35 - Landscape Completion Certification which reads as follows:

a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape consultant/horticulturalist or ecologist shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.
b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape consultant/horticulturalist or ecologist shall be submitted to the Certifying Authority, certifying that the landscaping works have been established and maintained in accordance with the approved landscape plan and inclusive of any conditions of consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

D. Add new Condition 35 - Landscape Completion to read as follows:

The remaining part of landscape works under DA2019/1463 and the subject of this Modification application shall be completed in accordance with Landscape Plan A106 Issue E.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

E. Delete Condition 38 - Required Planting which reads as follows:

Trees, shrubs and groundcovers shall be planted in accordance with Landscape Plan Drawing No. A106 Dated 29/6/20 prepared by Mark Hurcum Design Practice.

Reason: To maintain environmental amenity.

F. Amend Condition 40 - Garbage and Recycling Facilities to read as follows:

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

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

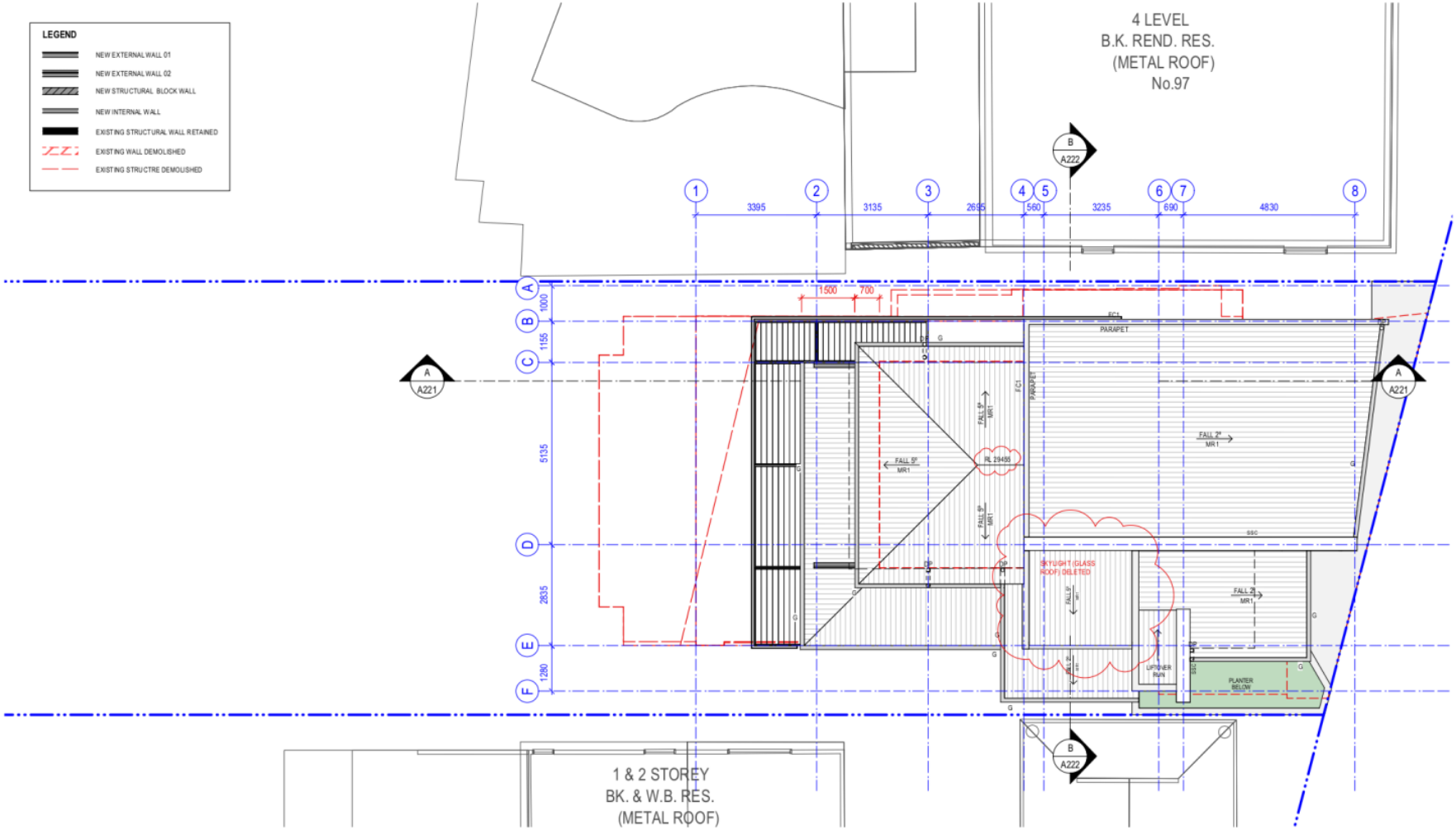
Reason: To prevent pollution of the environment and to protect the amenity of the area.

G. Amended Condition 41 - House/Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.



FOR SECTION 4.55

ROOF LEVEL PLAN

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NEW DWELLING ON EXISTING STRUCTURE

95 GURNEY CRESCENT SEAFORTH

A100 I

1:100 @ A3

Thursday, 25 February 2021

AMENDMENT	DATE	ISSUE
SECTION 4.55 FOR PRIVACY SCREENS	23/2/21	I
AMENDED FOR DA ASSESSMENT	11/5/20	B

MARK HURCUM DESIGN PRACTICE
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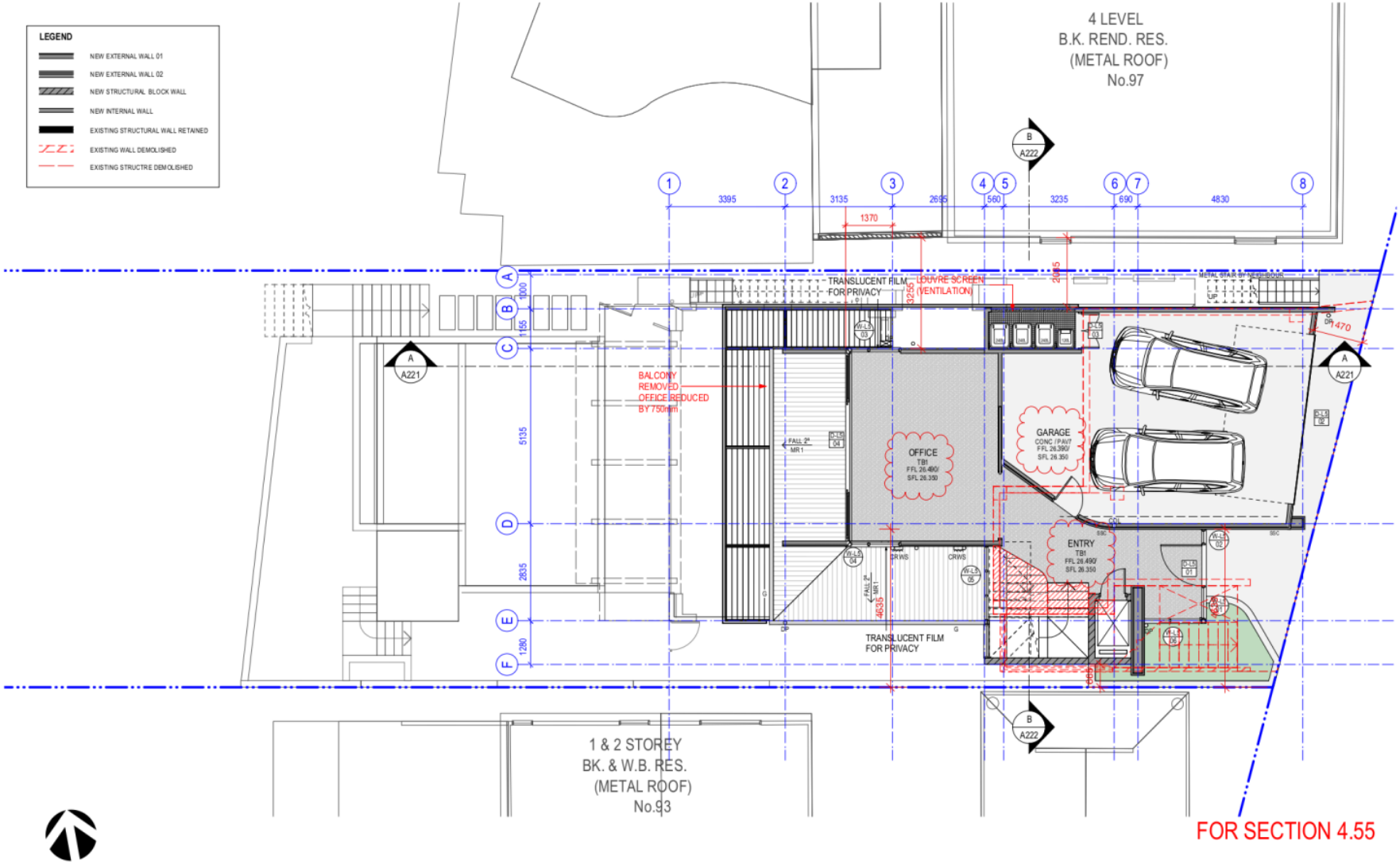
LEVEL 2 371 ALFRED STREET NORTH
NORTH SYDNEY NSW 2060
FACSIMILE 02) 9955 5843
TELEPHONE 02) 9955 5408
DESIGN PRACTICE



LEVEL 5 PLAN

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SECTION 4.55 FOR PRIVACY SCREENS
95 GURNEY CRESCENT SEAFORTH

A101 J

1:100 @ A3

Thursday, 25 February 2021

AMENDMENT	DATE	ISSUE
ISSUED FOR SECTION 4.55 PRIVACY SCREENS	23/2/21	J
AMENDED FOR DA ASSESSMENT	11/5/20	B

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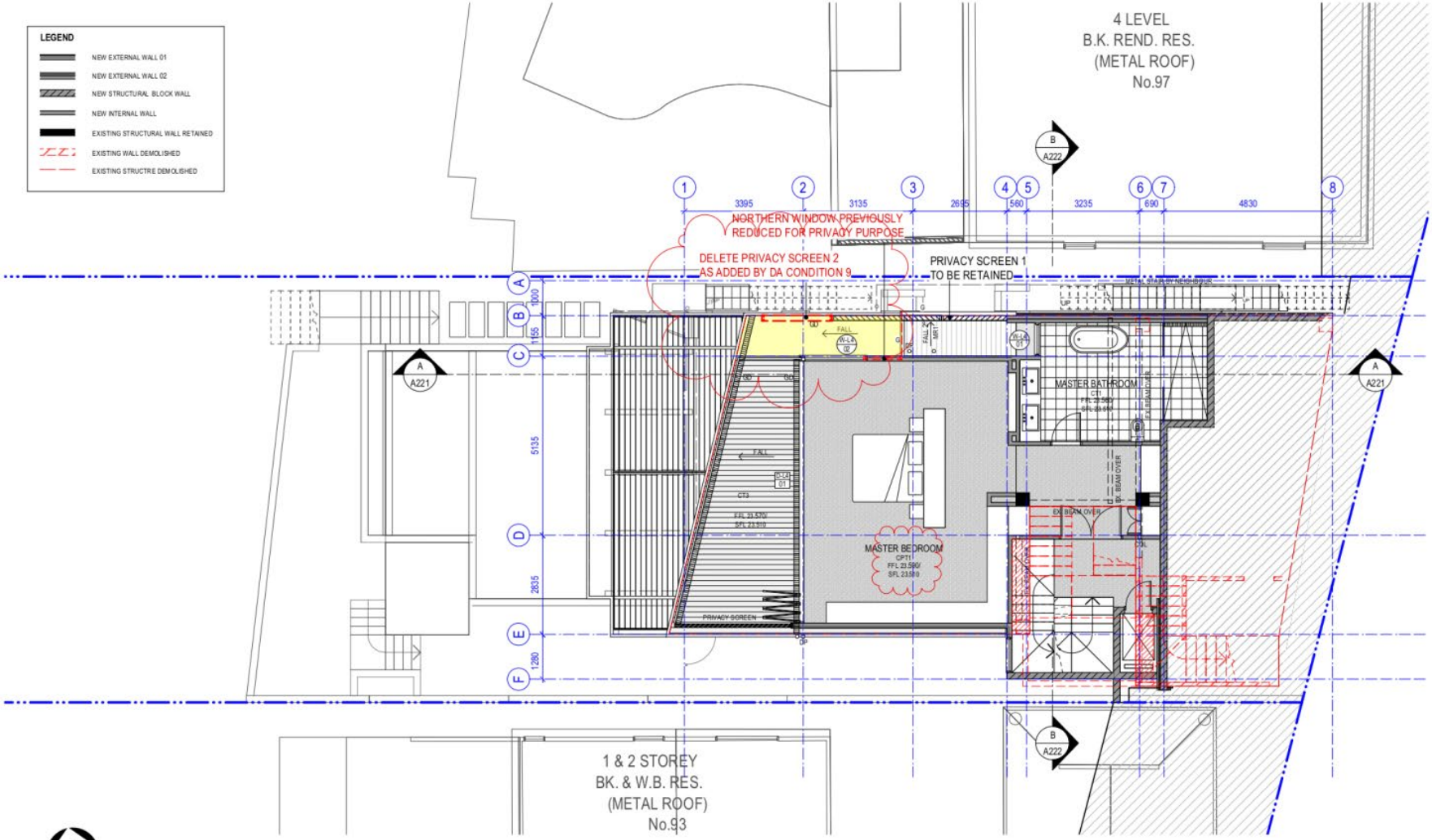
LEVEL 2 371 ALFRED STREET NORTH
NORTH SYDNEY NSW 2060
FACSIMILE 02) 9955 5843
TELEPHONE 02) 9955 5408
DESIGN PRACTICE



LEVEL 4 PLAN

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SECTION 4.55 FOR PRIVACY SCREENS

95 GURNEY CRESCENT SEAFORTH

A102 J

1:100 @ A3

Thursday, 25 February 2021

ISSUED FOR SECTION 4.55 PRIVACY SCREENS	23/2/21	J
AMENDED FOR DA ASSESSMENT	11/5/20	B
AMENDMENT	DATE	ISSUE

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LEVEL 2 371 ALFRED STREET NORTH
NORTH SYDNEY NSW 2060
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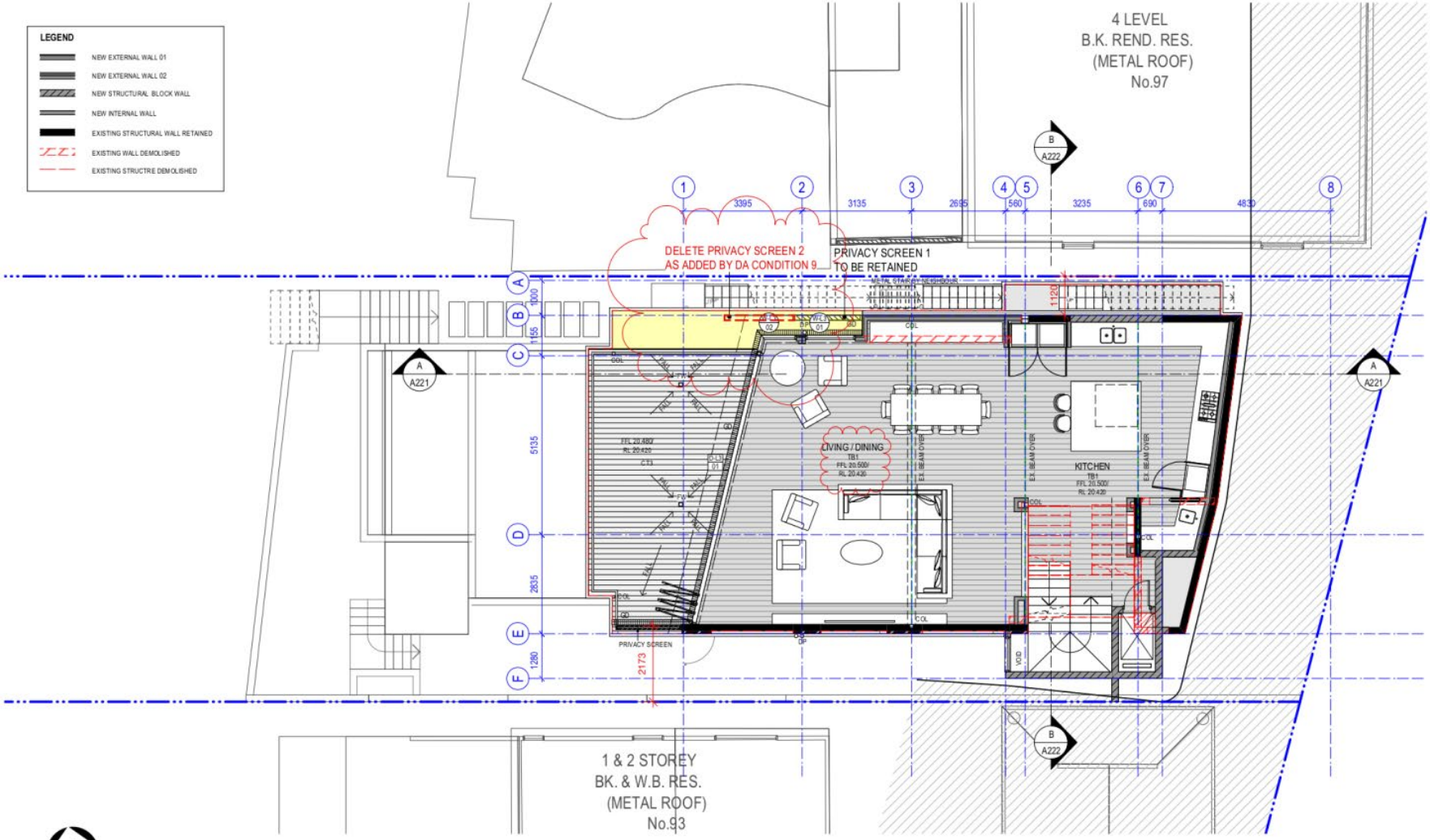

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SECTION 4.55 FOR PRIVACY SCREENS

95 GURNEY CRESCENT SEAFORTH

A103 J

1:100 @ A3

Thursday, 25 February 2021

	DATE	ISSUE
ISSUED FOR SECTION 4.55 PRIVACY SCREENS	23/2/21	J
AMENDED FOR DA ASSESSMENT	11/5/20	B
AMENDMENT		

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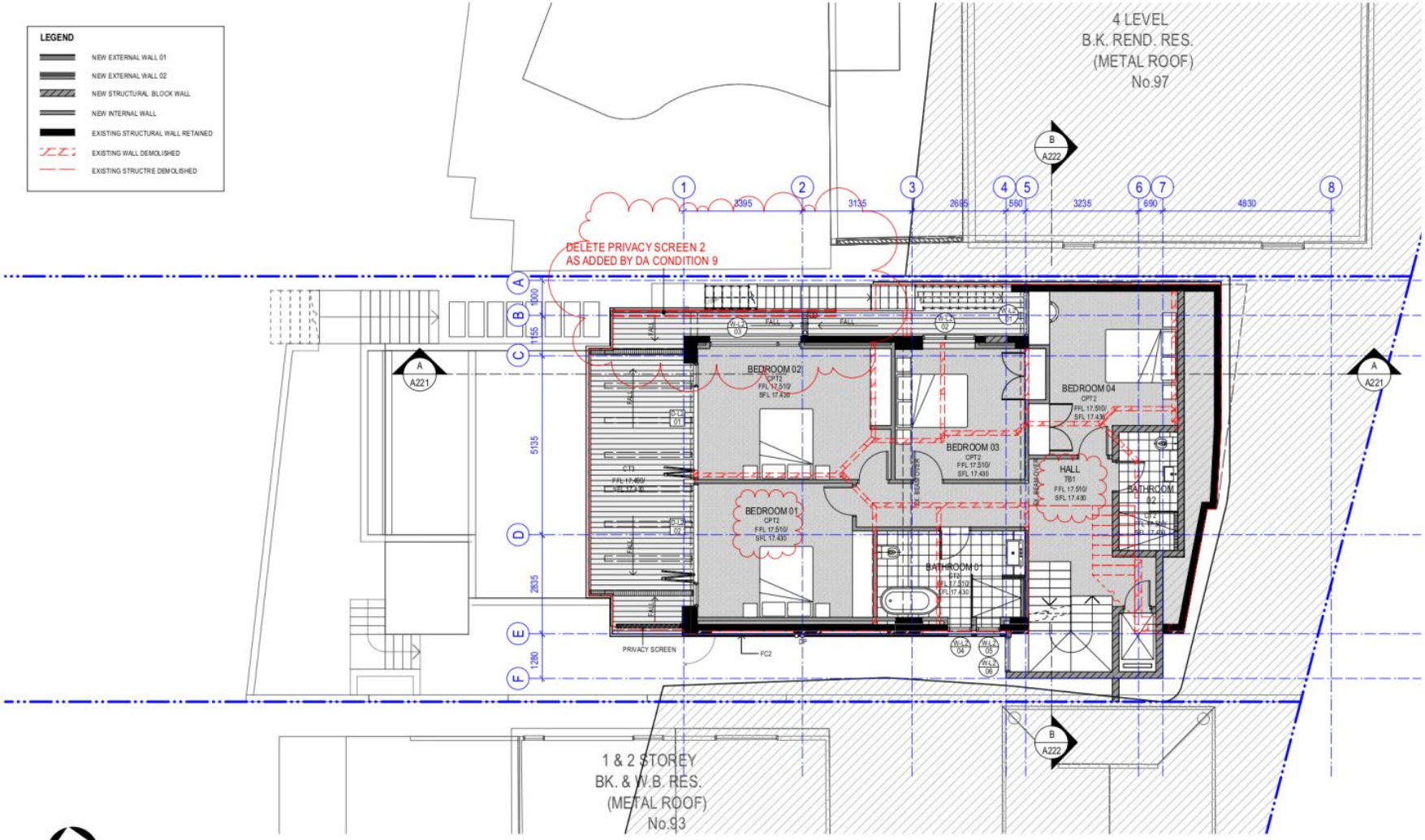

LEVEL 2 PLAN

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SECTION 4.55 FOR PRIVACY SCREENS

95 GURNEY CRESCENT SEAFORTH

FOR SECTION 4.55

A104 J

1:100 @ A3

Thursday, 25 February 2021

AMENDMENT	DATE	ISSUE
ISSUED FOR SECTION 4.55 PRIVACY SCREENS	24/2/21	J
ISSUED FOR DEVELOPMENT APPLICATION	16/12/19	A

MARK HURCUM DESIGN PRACTICE
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LEVEL 2 371 ALFRED STREET NORTH
NORTH SYDNEY NSW 2060
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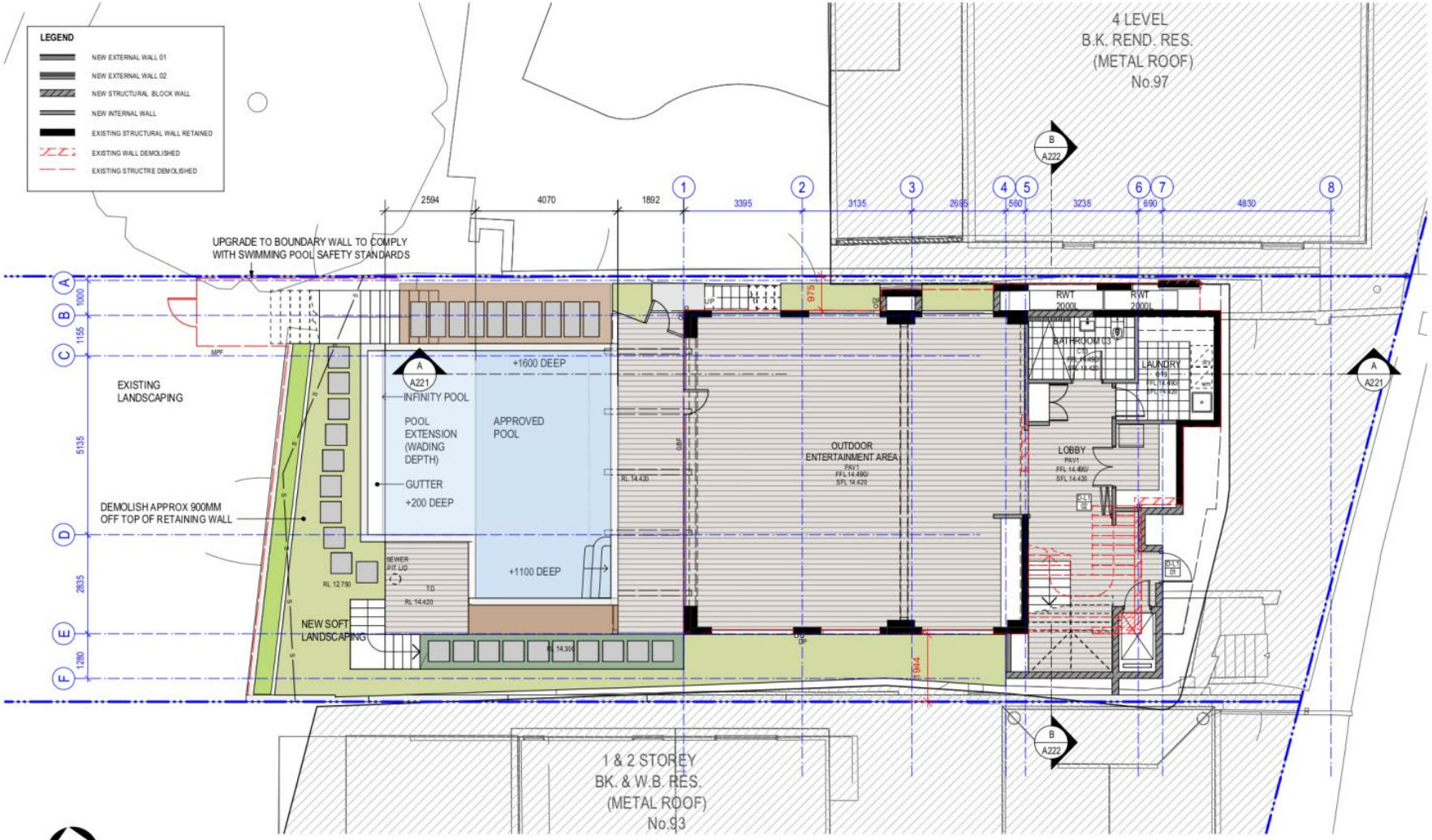
TELEPHONE 02) 9955 5408
DESIGN PRACTICE



LEVEL 1 PLAN

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SECTION 4.55 FOR PRIVACY SCREENS
95 GURNEY CRESCENT SEAFORTH

FOR SECTION 4.55

A105 L

1:100 @ A3

Thursday, 25 February 2021

AMENDMENT	DATE	ISSUE
ISSUED FOR SECTION 4.55 PRIVACY SCREENS	24/2/21	L
ISSUED FOR DEVELOPMENT APPLICATION	16/12/19	A

MARK HURCUM DESIGN PRACTICE
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NORTH SYDNEY NSW 2060
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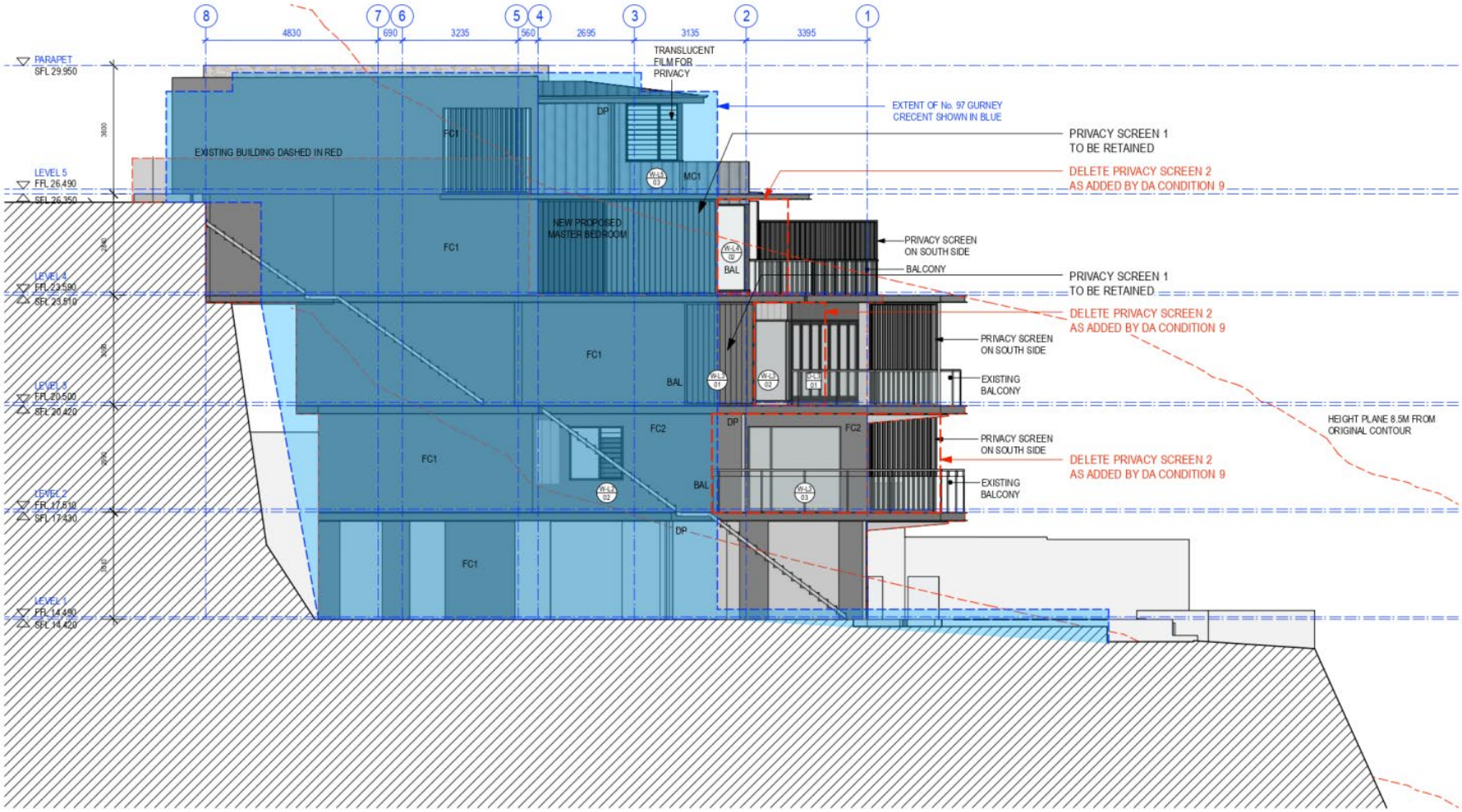
DESIGN PRACTICE



NORTH ELEVATION

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SECTION 4.55 FOR PRIVACY SCREENS

95 GURNEY CRESCENT SEAFORTH

A201 F

1:100 @ A3

Thursday, 25 February 2021

AMENDMENT	DATE	ISSUE
ISSUED FOR SECTION 4.55 PRIVACY SCREENS	23/2/21	F
AMENDED FOR DA ASSESSMENT	11/5/20	B

MARK HURCUM DESIGN PRACTICE
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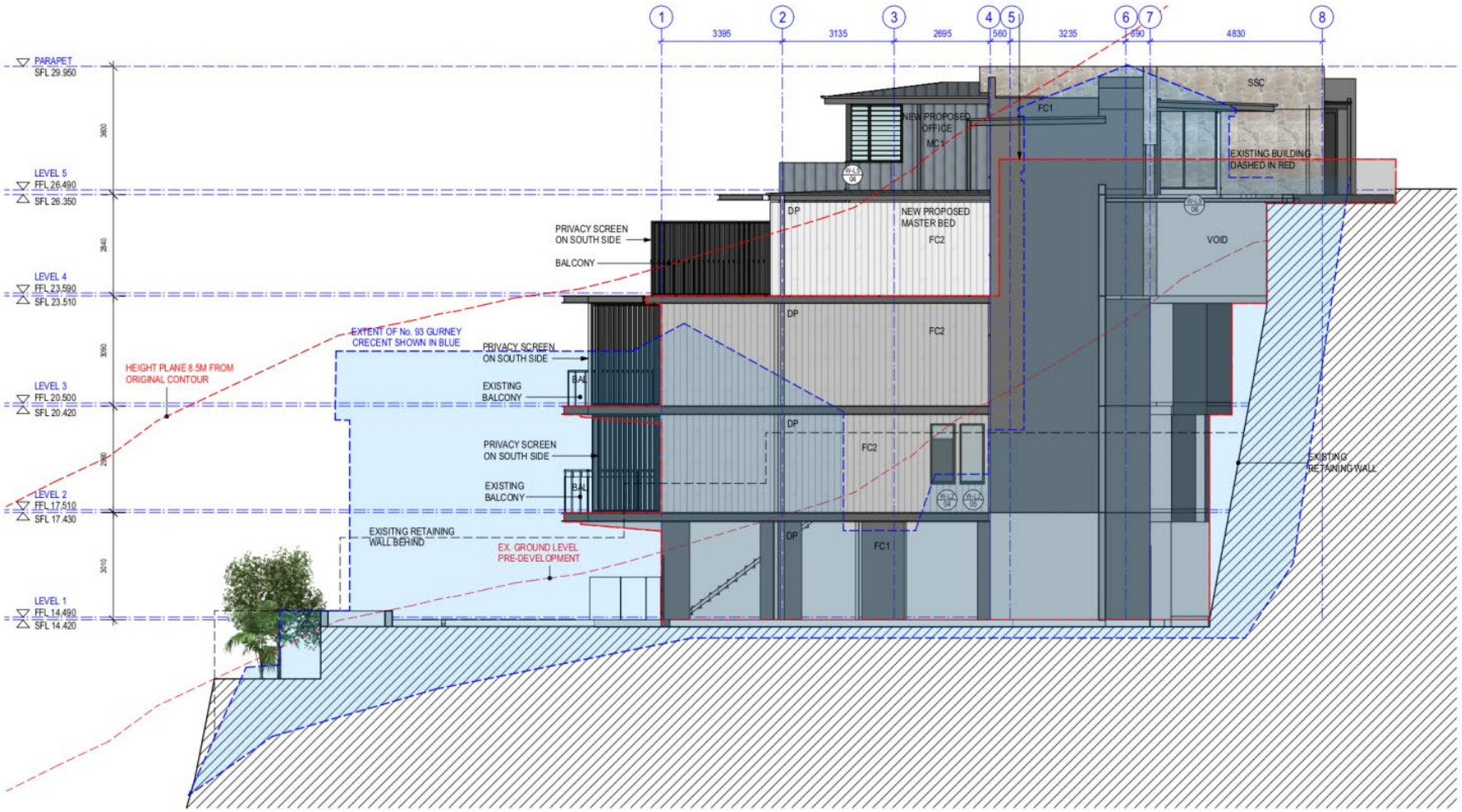
LEVEL 2 271 ALFRED STREET NORTH
NORTH SYDNEY NSW 2060
FACSIMILE 02) 9955 5843
TELEPHONE 02) 9955 5408
DESIGN PRACTICE



SOUTH ELEVATION

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SECTION 4.55 FOR PRIVACY SCREENS

95 GURNEY CRESCENT SEAFORTH

A202 E

1:100 @ A3

Thursday, 25 February 2021

AMENDMENT	DATE	ISSUE
ISSUED FOR SECTION 4.55 PRIVACY SCREENS	23/2/21	E
AMENDED FOR DA ASSESSMENT	11/5/20	B

MARK HURCUM DESIGN PRACTICE
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LEVEL 2 371 ALFRED STREET NORTH
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DESIGN PRACTICE

EAST AND WEST ELEVATION

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SECTION 4.55 FOR PRIVACY SCREENS

95 GURNEY CRESCENT SEAFORTH

A203 G

1:100 @ A3

Thursday, 25 February 2021

ISSUED FOR SECTION 4.55 PRIVACY SCREENS	23/2/21	G
AMENDED FOR DA ASSESSMENT	11/5/20	B
AMENDMENT	DATE	ISSUE

MARK HURCUM DESIGN PRACTICE
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LEVEL 2 371 ALFRED STREET NORTH
NORTH SYDNEY NSW 2060
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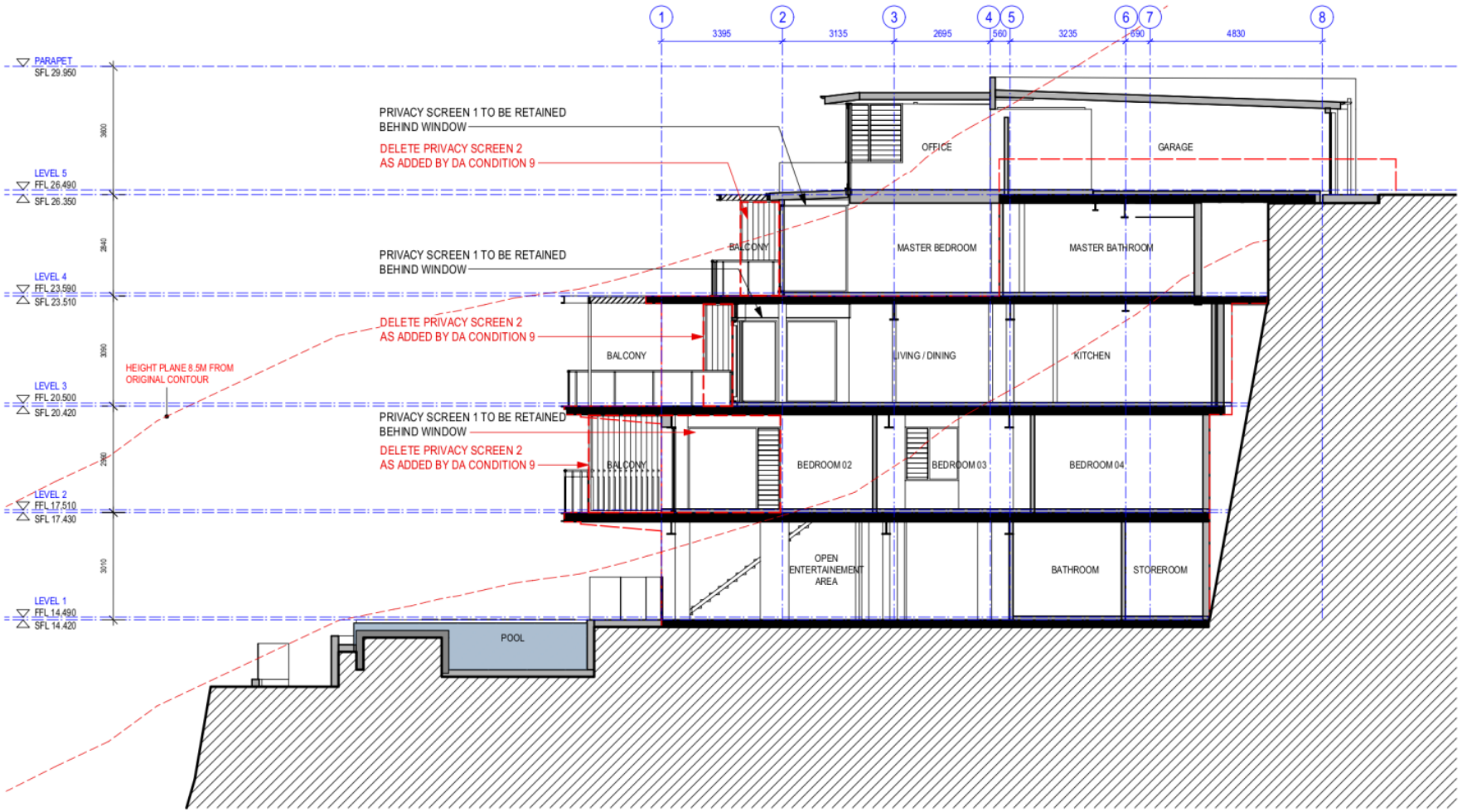

SECTION A-A

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SECTION 4.55 FOR PRIVACY SCREENS

95 GURNEY CRESCENT SEAFORTH

A221 D

1:100 @ A3

Wednesday, 24 February 2021

AMENDMENT	DATE	ISSUE
ISSUED FOR SECTION 4.55 PRIVACY SCREENS	23/2/21	D
AMENDED FOR DA ASSESSMENT	11/5/20	B

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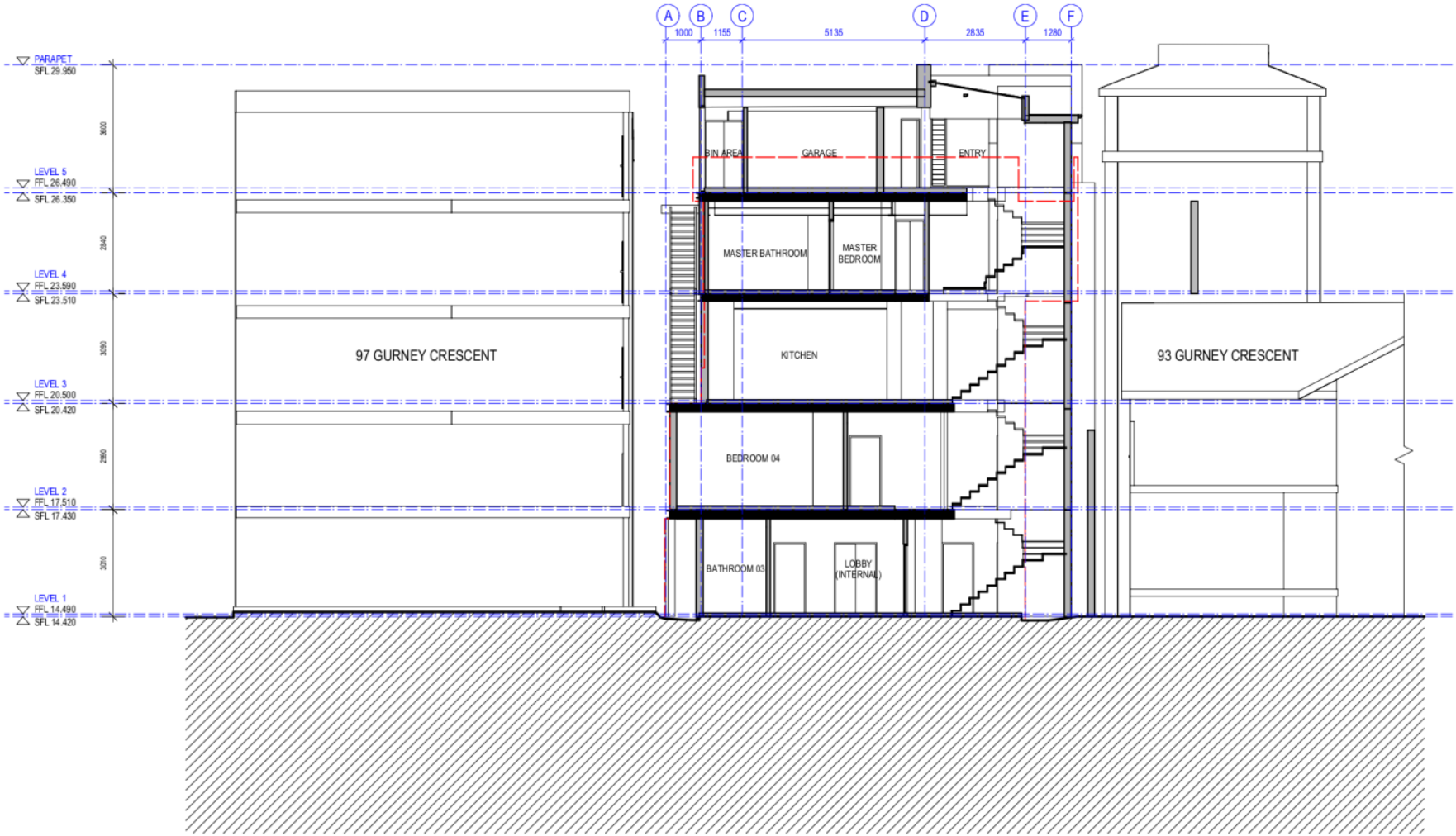

SECTION B-B

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SECTION 4.55 FOR PRIVACY SCREENS

95 GURNEY CRESCENT SEAFORTH

A222 D

1:100 @ A3

Wednesday, 24 February 2021

AMENDMENT	DATE	ISSUE
ISSUED FOR SECTION 4.55 PRIVACY SCREENS	23/2/21	D
AMENDED FOR DA ASSESSMENT	11/5/20	B

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NORTH SYDNEY NSW 2060
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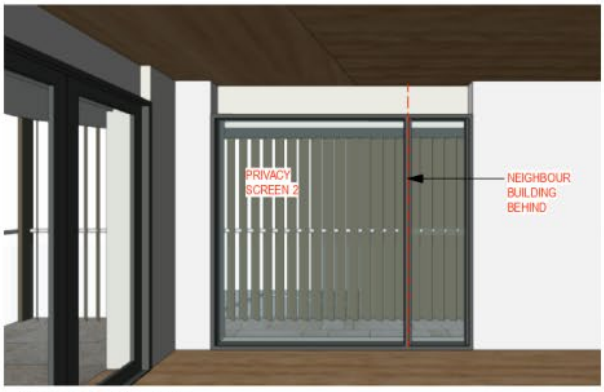
DESIGN PRACTICE

PRIVACY SCREEN AS PER APPROVED DA

LEVEL 4 - MASTER BEDROOM

LEVEL 3 - LIVING ROOM



LEVEL 2 - BEDROOM 2

PROPOSED PRIVACY SCREEN

LEVEL 4 - MASTER BEDROOM

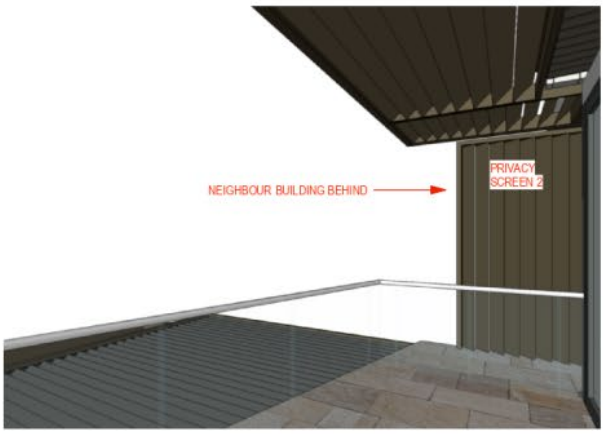
LEVEL 3 - LIVING ROOM

LEVEL 2 - BEDROOM 2

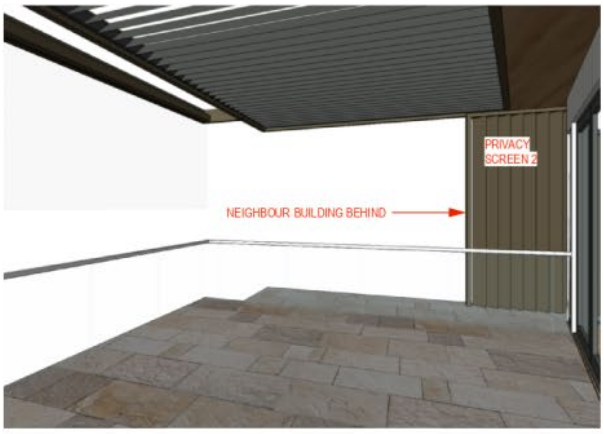
NOTE:
- SECONDARY BEDROOM WINDOW ONLY
- > 2m OFF BOUNDARY
- MAJOR WINDOW (AND DOOR) LOOKS WEST

Other		NOTES: © THE DESIGN REMAINS THE PROPERTY OF MARK HUNSUN DESIGN PRACTICE AND MUST NOT BE COPIED OR LOANED WITHOUT WRITTEN CONSENT. MARK HUNSUN DESIGN PRACTICE PTY LIMITED - 2019	ISSUED FOR SECTION 4.55 PRIVACY SCREENS AMENDMENT — DATE — REVISION	PROJECT: SECTION 4.55 - PRIVACY SCREENS; ADDRESS: 95 GURNEY CRESCENT SEAFORTH; CLIENT: Mr Smith	DRAWING TITLE: VIEW OF NEIGHBOURS FROM INSIDE	DATE: FEBRUARY 2021; SCALE: 1:200 @A3; PROJECT NO: 1917; DRAWING NO: SK24; REVISION: A	DRAWN BY: SS; MHDP ARCHITECTS; LEVEL 3 CITY AERIED STREET NORTH SYDNEY NSW 2060; EMAIL: admin@mhdp.com.au; TELEPHONE: (02) 9922 2344; NSW NOMINATED ARCHITECT: MARK HUNSUN - Reg. No. 5890; 1917 NSW Gurney Crescent.dwg; Thursday, 25 February, 2021

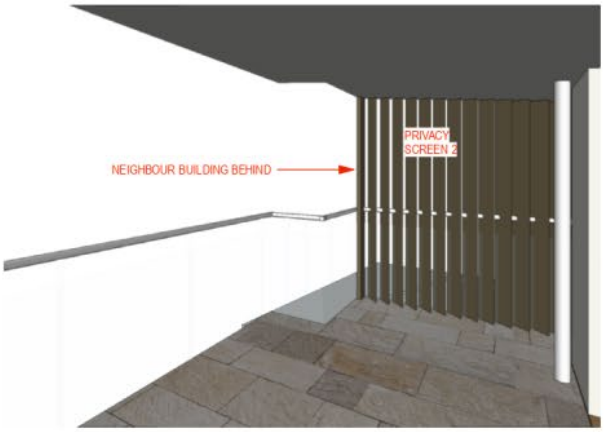
PRIVACY SCREEN AS PER APPROVED DA



LEVEL 4 - MASTER BEDROOM



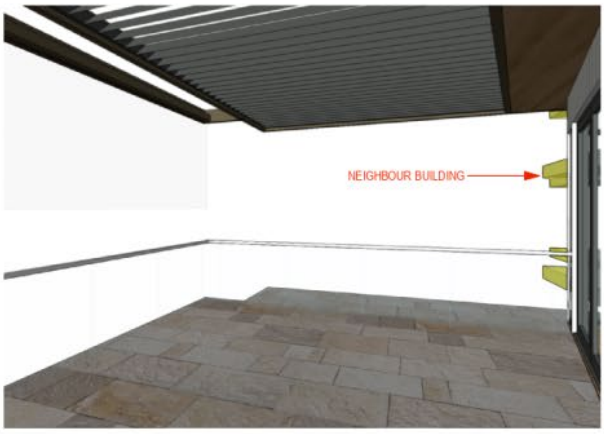
LEVEL 3 - LIVING ROOM



LEVEL 2 - BEDROOM 2

PROPOSED PRIVACY SCREEN

LEVEL 4 - MASTER BEDROOM



LEVEL 3 - LIVING ROOM

LEVEL 2 - BEDROOM 2

PROJECT
SECTION 4.55 - PRIVACY SCREENS
ADDRESS
95 GURNEY CRESCENT SEAFORTH
CLIENT
Mr Smith

DRAWING TITLE
VIEW OF NEIGHBOURS FROM BALCONY

DATE FEBRUARY 2021
DRAWN BY SS
SCALE 1:200 @A3
PROJECT NO 1917
DRAWING NO SK25
REVISION A

MHDP ARCHITECTS

SECTION 4.55

Other

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AMENDMENT	DATE	REVISION
ISSUED FOR SECTION 4.55 PRIVACY SCREENS	24/2/21	A

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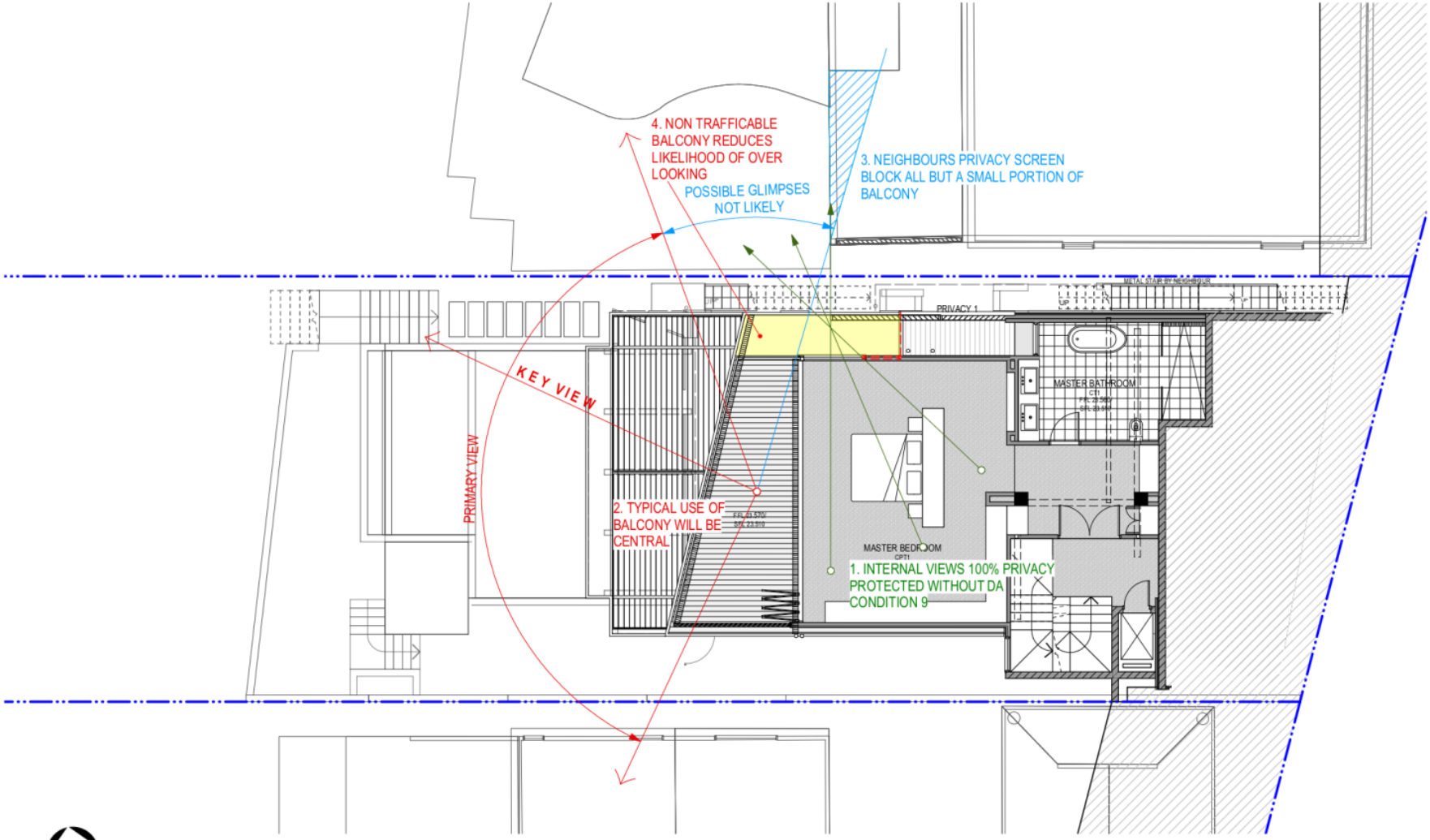
Do not scale drawings. Use figured dimensions. Figured dimensions for the measured drawings are nominal measurements only. All levels and dimensions are to be checked and verified on site prior to the commencement of any work, making of shop drawings or fabrication of components.

PROJECT
ALTERATIONS AND ADDITIONS
ADDRESS
95 GURNEY CRESCENT SEAFORTH
CLIENT
Ms N van Gemert and Mr J Ball

DRAWING TITLE
SITE ANALYSIS

DATE FEBRUARY 2021
DRAWN BY SS
SCALE
PROJECT NO. 1917
DRAWING NO. SK26
REVISION A

MHDP ARCHITECTS
LEVEL 2 / 271 ALFRED STREET NORTH
NORTH SYDNEY NSW 2060
EMAIL: architects@mhdp.com.au
TELEPHONE (02) 9955 9005
NSW NOMINATED ARCHITECT MARK HURCUM – Reg. No. 5605
1917 A001 Current Drawings.rvt Thursday, 25 February 2021



LEVEL 4 PRIVACY ANALYSIS

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SECTION 4.55 FOR PRIVACY SCREENS
95 GURNEY CRESCENT SEAFORTH

FOR SECTION 4.55

SK102 A

1:100 @ A3

Thursday, 25 February 2021

AMENDMENT	DATE	ISSUE
ISSUED FOR SECTION 4.55 PRIVACY SCREENS	24/2/21	A

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NORTH SYDNEY NSW 2060
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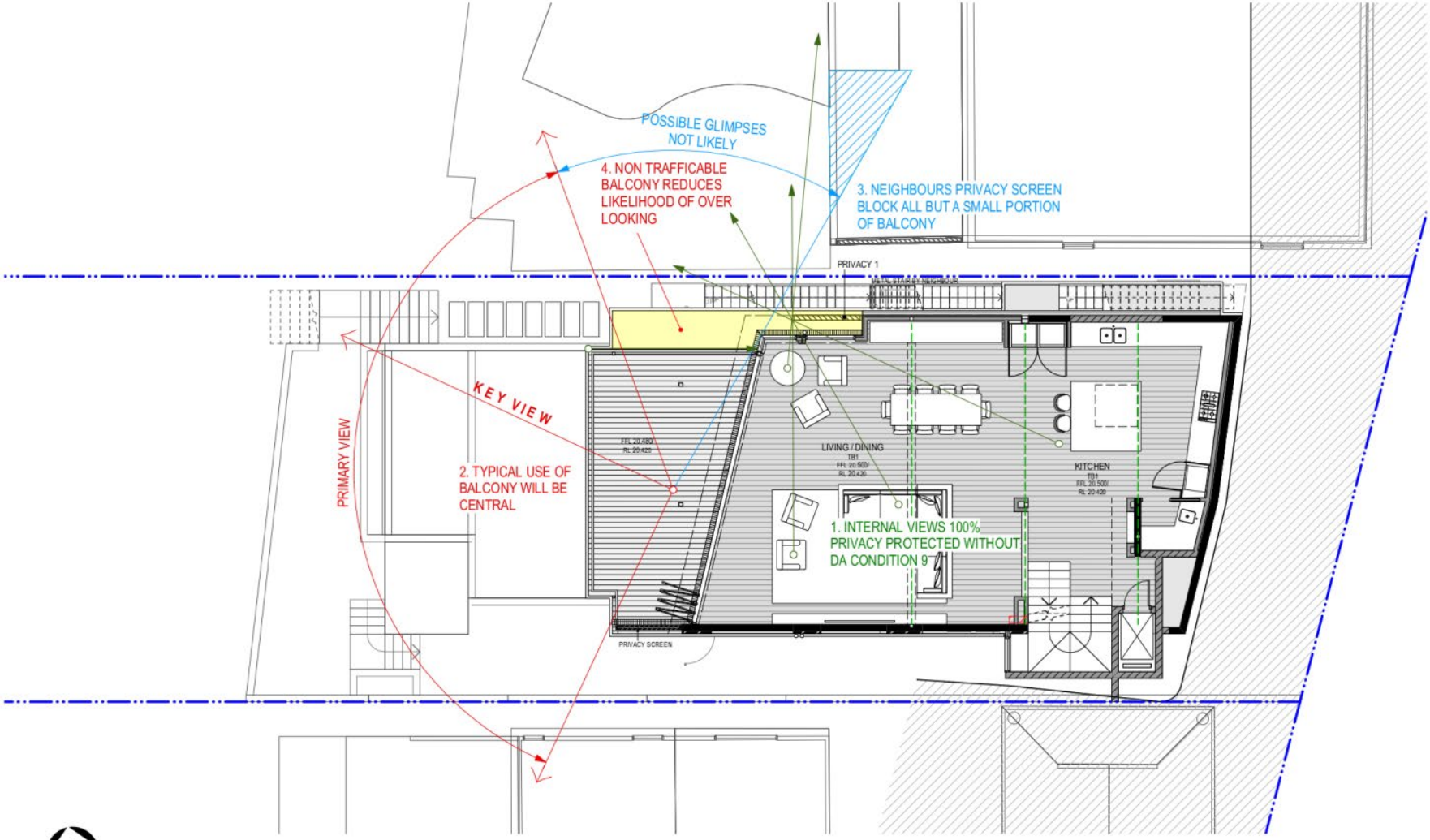
DESIGN PRACTICE



LEVEL 3 PRIVACY ANALYSIS

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SECTION 4.55 FOR PRIVACY SCREENS

95 GURNEY CRESCENT SEAFORTH

FOR SECTION 4.55

SK103 A

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Thursday, 25 February 2021

AMENDMENT	DATE	ISSUE
ISSUED FOR SECTION 4.55 PRIVACY SCREENS	24/2/21	A

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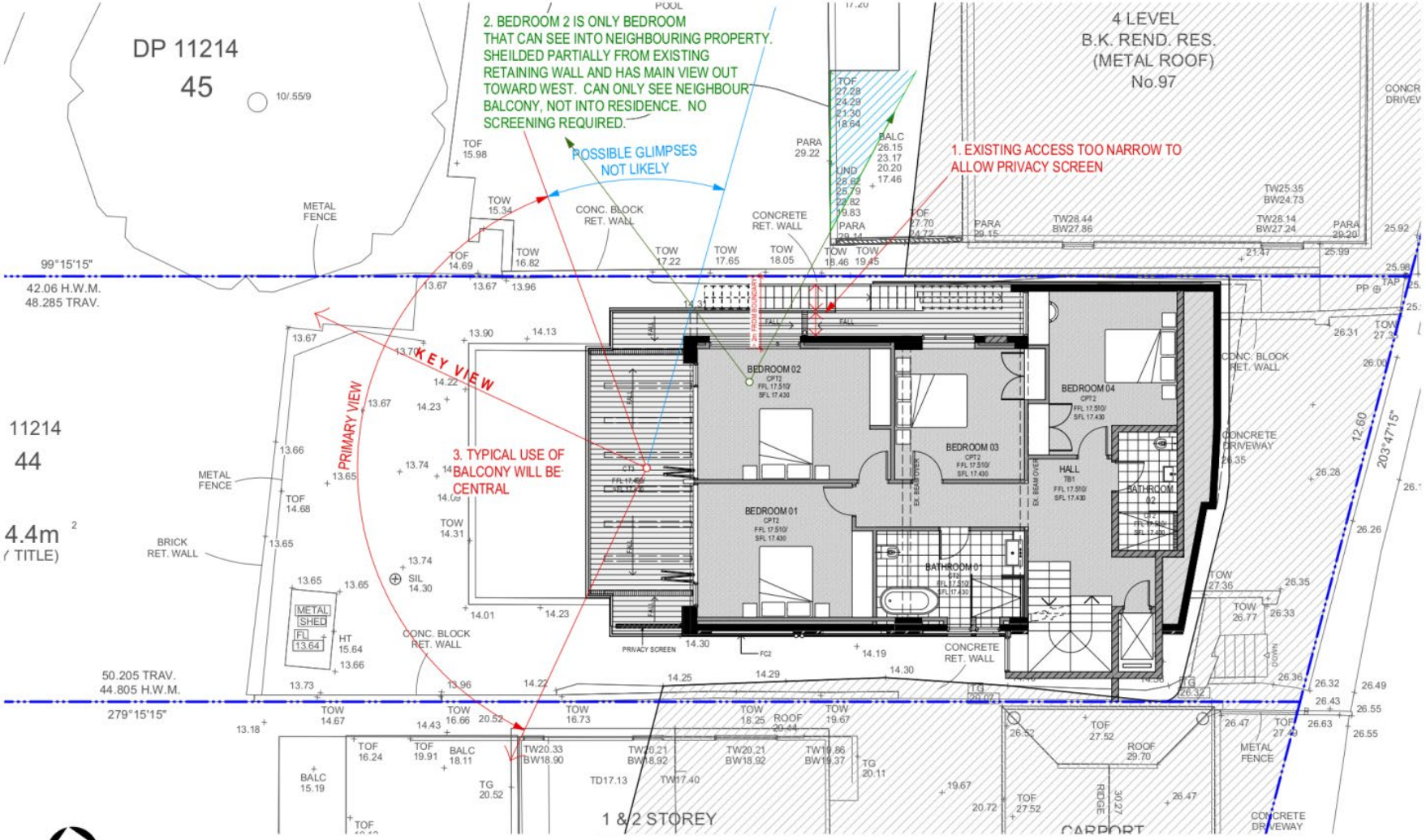

FOR SECTION 4.55

LEVEL 2 PRIVACY ANALYSIS

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SECTION 4.55 FOR PRIVACY SCREENS
95 GURNEY CRESCENT SEAFORTH

SK104 A

1:100 @ A3

Thursday, 25 February 2021

ISSUED FOR SECTION 4.55 PRIVACY SCREENS — 24/2/21 — A
AMENDMENT — DATE — ISSUE

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NORTH SYDNEY NSW 2060
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ITEM 3.5	**REV2021/0009 - 27 ALAN AVE, SEAFORTH - REVIEW OF DETERMINATION OF APPLICATION DA2019/1447 FOR DEMOLITION WORKS, TORRENS TITLE SUBDIVISION OF 1 LOT INTO 2 LOTS AND CONSTRUCTION OF A DWELLING HOUSE AND SWIMMING POOL AND FENCING ON EACH LOT**
REPORTING MANAGER	**Lashta Haidari**
TRIM FILE REF	**2021/317584**
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** REV2021/0009 for review of determination of Application DA2019/1447 for demolition works, Torrens Title subdivision of 1 lot into 2 lots and construction of a dwelling house and swimming pool and fencing on each lot on land at Lot 81 DP 4889, 27 Alan Ave, Seaforth, subject to the conditions outlined in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0009

Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 81 DP 4889, 27 Alan Avenue SEAFORTH NSW 2092
Proposed Development:	Review of Determination of Application DA2019/1447 for demolition works, Torrens Title subdivision of 1 lot into 2 lots and construction of a dwelling house and swimming pool and fencing on each lot
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:	Yes
Owner:	Lucy Therese Giuliano Darren Sean O'Hanlon Ra El Khouri
Applicant:	Darren Sean O'Hanlon

Application Lodged:	15/03/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	23/03/2021 to 06/04/2021
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 2,431,000.00

Executive Summary

The proposed development is for the demolition of the existing structures, subdivision of the land and construction of two dwelling houses, swimming pools and associated landscaping. This application is a Review of Determination of DA2019/1447 which was refused by the Development Determination Panel (DDP) on 15 September 2020. The reasons for refusal are outlined later in this assessment report. The application is referred back to the DDP for determination as required by the delegation for a review of determination.

A Class 1 Appeal for the refusal of DA2019/1447 was filed with the NSW Land and Environment Court on 26 February 2021. Following this, the subject review of determination was lodged with Council on 15 March 2021. This review of determination included an amended set of plans and updated documentation in response to the reasons for refusal of DA2019/1447 which included increased side setbacks, reduction of gross floor area, reduction of the three storey component of the building and increased front setback to the upper floor levels, the full extent of changes listed later in the development description.

The application was publicly notified for a period of 14 Days and a total of seven (7) public submissions were received. The issues raised pertained to visual bulk and scale, streetscape character, inconsistency with the subdivision pattern, privacy, solar access, excavation, noise and non-compliance with the planning controls. Each of the submission issues have been addressed later within this assessment report and conditions have been recommended where appropriate to address the submission issues.

The amended plans and documentation submitted with the review of determination have been considered against the reasons for refusal of DA2019/1447 and is discussed in detail later in this assessment report. In summary, this assessment has found that the proposal has been amended in a satisfactory way to respond to the reasons for refusal and the applicant has put forward further supporting documentation and reasons to warrant support of the proposed subdivision pattern as part of this review. Consequently, it is recommended that the reasons for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application and the application is recommended for approval to the DDP for the reasons outlined in this report.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the demolition of the existing dwelling house and associated structures.

The proposal then seeks the Torrens title subdivision of one lot into two lots and construction of a dwelling house on each lot.
The dwelling houses consist of:

- Lower floor level: Garage, plant and subfloor area
- Ground floor level: Entry, family room, laundry, bathroom, bedroom, kitchen, dining and living room and swimming pool
- First floor level: Four (4) bedrooms (main with ensuite) and bathroom'

Associated landscaping, driveway and services to facilitate the development.

<u>Changes from DA2019/1447</u>

This application is a review of determination of DA2019/1447 and the following changes have been made from the previous proposal which can be seen in the submitted architectural plans, which shows

the previous extent of the proposal marked up on the proposed plans:

- Reduction of floor space ratio from 0.5:1 to 0.45:1 to comply with the FSR development standard
- Reduce the extent of the three storey component to limit this to a maximum of 8% of the building footprint, down from a maximum of 22% of the building footprint
- Bring garage forward for both dwellings and increase the front setback to levels 1 and 2, making the upper levels of the building more recessive in the streetscape stepping back from the lower garage level.
- Increase side setbacks for each elevation of the building between 150mm and 400mm, as demonstrated on the plans.
- Implement privacy measures for balconies and windows where necessary along each elevation (the privacy measures proposed are described in detail later 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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
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 - 3.9 Mechanical Plant Equipment
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 - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 81 DP 4889 , 27 Alan Avenue SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Alan Avenue. The site is regular in shape with a frontage of 20.115m along Alan Avenue and a depth of 60.96m. The site has a surveyed area of 1226m². The site is located within the R2 Low Density Residential zone and accommodates single storey dwelling house. The site has a 5% fall from the rear southern boundary to the front northern boundary. The site has a mixture of native and exotic species of plants, shrubs and trees. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by single and two storey dwellings with associated structures and landscaping gardens. Immediately to the west of the site is a single storey dwelling and immediately to the east of the site is a two storey dwelling. Across the road to the north area a mixture of one and two storey residential dwellings.

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:

DA2019/1447 - 'Demolition works, torrens title subdivision into two lots and the construction of a dwelling house and swimming pool on each lot' was refused by the Development Determination Panel on 15 September 2020. The reasons for refusal were as follows:

- *1.Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.*

  2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the objectives of Clause 4.1 Minimum subdivision lot size of the Manly Local Environmental Plan 2013.

  3.Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan 2013.

  4.Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.2.1 Wall Height of the Manly Development Control Plan 2013.

  5.Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.2.2 Number of Storeys of the Manly Development Control Plan 2013.

  6.Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.4.2 Side Setbacks of the Manly Development Control Plan 2013.

A Class 1 Appeal was submitted to the NSW Land and Environment Court on 26 February 2021 to appeal the refusal of DA2019/1447.

The subject Review of Determination application REV2021/0005 was submitted on 15 March 2021 with amended plans and supporting information in response to the above reasons for refusal by the DDP.

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.

As the determination was made within the 'prescribed period' as outlined in Division 8.10 (1)(b), a request for the review must be made and determined within 12 months after the date of determination of the application. The application was determined on 15 September 2020 and the notice of determination was issued on 15 September 2020. The review was lodged on 15 March 2021 and is to be considered by the Development Determination Panel on 12 May 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.

Assessment of Reasons for Refusal DA2019/1447

How has the 8.2 Application Responded to The Reasons for Refusal?
The applicant has amended the proposal and has provided additional information. Consequently, the Reasons for Refusal of DA2019/1447 that are stipulated in the Notice of Determination are examined below to determine if they remain applicable or should be overturned:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Comment: This assessment report finds that the proposed development following amendments to the application is compliant with the key development standards contained within the Manly LEP and the variations to the DCP proposed do not result in unreasonable amenity impacts that would warrant refusal of the application due to not being within the public interest. The issue of setting an undesirable precedent due to the subdivision pattern is addressed below and the development is found to have an acceptable presentation within the streetscape, for the reasons outlined within this report. The submissions made against the development application are addressed later within this assessment report.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the objectives of Clause 4.1 Minimum subdivision lot size of the Manly Local Environmental Plan 2013.

Comment: The DDP raised that the proposal was inconsistent with the objectives of the development standard, notwithstanding the subdivision was compliant with the minimum lot size of 600sqm (proposed Lots A and B each 613.17sqm). The applicant has put forward the following response to this reason for refusal based on the objectives of the development standard:

- *We note that this reason for refusal does not relate to non-compliance with the numerical standard but rather alleged inconsistency with the objectives of the subdivision lot size standard. The relationship of the numerical standard and its associated objectives was dealt with by Justice Preston in Wehbe v Pittwater Council [2007] NSWLEC 827 where at paragraph 43 he states:*

  43 The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a

development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved.

Adopting this position, a development that satisfies the numerical subdivision allotment size standard is deemed to comply with the associated objectives. We consider this to be the case as clearly demonstrated within this statement and accordingly there are insufficient environmental planning grounds to justify the refusal of the application on this basis.

Notwithstanding, we consider the side-by-side subdivision pattern proposed, whereby both properties have direct street frontage, should be preferred over the alternate battle-axe arrangement seen elsewhere in the locality where dwelling houses are introduced into the rear yard of lots where they immediately adjoin the rear yard of adjoining properties. This dwelling house arrangement has the potential to create significantly greater residential amenity impacts in terms of views, solar access and privacy compared to the dwelling house arrangement proposed whereby the dwellings maintain the same built form rhythm in the street with large landscaped rear yards creating a sense of openness and privacy as viewed from the rear yards of the adjoining properties.

In this regard, the propose subdivision lot size and arrangement to be fully compliant with the subdivision lot size standard and entirely appropriate given the subdivision pattern established by adjoining development.

Having reviewed the above response by the application, the assessment of this review of determination adopts the above position, whereby the objectives of the development standard are achieved by way of numerical compliance. The issues pertaining to the resulting streetscape outcome and character of the locality as a result of the development and subdivision pattern are addressed in detail in point 3 below. The assessment of this review of determination has formed the opinion that a side-by-side subdivision pattern is a superior outcome in terms of residential amenity for and from the development.

The DDP raised issue that the proposed subdivision pattern would result in a precedent being set for the rest of the street, which would fundamentally change the streetscape character by providing for additional narrow alotments into the future. The applicant has addressed this concern in their submission as follows:

- *The minutes of the DDP meeting of 15th September 2020 included a concern that approval of the application would set an undesirable precedent which would extend to at least 8 other lots in the street and has the potential to transform the established character of the area in a manner that is contrary to the planning controls.*

  In this regard, we note that the properties located on the northern side of Alan Avenue have a minimum subdivision lot size requirement of 750 square metres being 150 square metres greater than the minimum 600 square metre minimum subdivision lot size applicable to the land located on the southern side of the street including the subject property. Having reviewed the lot sizes established by the balance of the properties located along Alan Avenue we can confirm that, with the exception of No. 25 Alan Avenue, no other properties in the street are of a size that would enable them to be subdivided in accordance with the minimum lots size standard.

  Under such circumstances no undesirable precedent would be created through approval of the proposed subdivision.

The assessment of this review application included a review of the existing lot sizes within the

immediate site context and the minimum permissible lot size on both sides of Alan Avenue. The above assertions made by the applicant are agreed with following this review, in that only one other site in the immediate vicinity could be subdivided with a compliant in lot size. Therefore, the proposal is not considered to set a precedent for future development in Alan Avenue going forward.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan 2013.

Comment: Clause 3.1.1.1(a) requires that development should be designed to 'complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality'.

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:
Firstly, the site is not within a heritage conservation area which would guide the architectural style and building form required to compliment any particular heritage character or theme. The surrounding context is mostly two storey and some single storey buildings within the 8.5m building height under the MLEP 2013. Although the proposed development is partially three stories, the building is within the 8.5m height limit which guides the maximum desired building height and scale of development for the area. As explained later within this report, the non-complying 3 storey element is a minor portion of the building (5% and 8% of the building footprint for each lot) and the building design has been amended to reduce the extent of three storey elements and provide increased stepping of the building form for the upper levels.

As the planning principle states, a building does not have to be single storey to be compatible with the streetscape even where most existing building are single storey. The same could be said for compatibility of a three storey building within a streetscape consisting mainly of two storey buildings, where the proposed three storey building is within the permissible height limit and comparable with the height of the two storey buildings in the vicinity of the site. For comparison, the maximum ridge height of the adjoining property 25 Alan Avenue is RL65.3 and the ridge of that dwelling running parallel to the street frontage for the width of the building. The proposed development has a ridge height of RL65.75 and RL65.2 and therefore is comparable in height of the adjoining two storey building.

In this regard, it is considered that the scale of the development is compatible with the streetscape

and consistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment:
The proposed development reads clearly as two separate dwelling houses with separation between the buildings that is capable of providing landscaping. The building has provided a front setback that reflects the two adjoining properties and the buildings are setback an appropriate distance from the street edge to be in harmony with the existing buildings. The proposed development is compliant with the required 55% open space, 35% landscaping requirements under the DCP and the 0.45:1 Floor Space Ratio under the LEP which guides the general size and configuration of the building footprint for future development.

In this regard, the development is considered to be compatible with the size and scale of surrounding development and consistent with the second principle.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment:

The development has been designed to retain the significant Port Jackson Fig in the north-eastern corner of the site which will assist in preserving the character of the front setback area and reduce the visual dominance of the development. An area is provided in the north-western corner of the site for another new canopy tree to add to the landscaped front setback and be consistent with the landscaped setting of the locality. Natural ground levels are maintained along the side setbacks of the building adjoining the two neighbouring properties.

In this regard, it is considered that effective methods have been employed in the design of the development to reduce its visual dominance and is consistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

The streetscape currently consist of a mixture of older style single storey and two storey brick dwellings with pitched roofs, along with the occasional newly constructed two storey dwelling which consist of more modern facade elements, materials and architectural features such as a flat roof and parapets.

Whilst the proposal is not necessarily the same as the existing development along the street in terms of its form and architecture, the use of a flat roof is not unseen in the Seaforth locality and Alan Avenue (notably the dwelling at 10 Alan Avenue) and there are examples of contemporary building forms with a flat roof in the locality of Seaforth which reflect a newer style of architecture that can still be sympathetic

to the spatial proportions of the street, scale and landscape character of the area, whilst allowing a contemporary style of building and use of high quality materials.

Materials such as sandstone, timber batten garage doors, weatherboard cladding and rendered brick facade, together with landscape planting which is consistent with the surrounding materials and treatments. The materials selected are considered to be of high quality and add visual interest for the development, resulting in a contemporary and high quality addition to the streetscape. The schedule of materials and finishes submitted with the application are sympathetic and compatible with the surrounding context.

In this regard, the development is considered to be consistent with the fourth principle.

The above Principals 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 development does not constrain future development potential of the adjoining sites in terms of overshadowing or privacy, outlook or building separation.

Privacy

The proposal provides for the reasonable retention of privacy for the reasons outlined later in this assessment report.

Overshadowing

The proposal provides for the reasonable retention of solar access for the reasons outlined later in this assessment report.

Noise

The proposal will not result in adverse impacts in regards to noise and noise from any pool pumps is addressed in the recommended conditions.

Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is compatible with the character of the local area and surrounding wider locality.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.2.1 Wall Height of the Manly Development Control Plan 2013.

Comment: The issue of wall height non-compliance is discussed in detail later within this assessment report. The wall height non-compliance is considered minor in nature and does not result in unreasonable amenity impacts or result in a building that is excessive in bulk and scale for the site.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.2.2 Number of Storeys of the Manly Development Control Plan 2013.

Comment: The amended plans submitted have reduced the extent of the three storey component of the building. The merit consideration and details of the non-compliance is discussed in detail later within this assessment report and in detail in Point 3 regarding the compatibility of the development for the streetscape.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.4.2 Side Setbacks of the Manly Development Control Plan 2013.

Comment: The amended plans submitted have increased the side setbacks to each boundary of the proposed dwelling, including the setbacks to the adjoining properties. Although still non-compliant, the merit consideration of the non-compliance is discussed in detail later within this assessment report and the proposal does not result in unreasonable amenity impacts and maintains reasonable spatial separation that would be expected in a residential context.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

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 23/03/2021 to 06/04/2021 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 6 submission/s from:

Name:	Address:

Name:	Address:
Mr John Coumanias	12/600 Military Road MOSMAN NSW 2088
Mr William Victor Anderson	29 Alan Avenue SEAFORTH NSW 2092
Mr Domenico Ferragina	64 A Edgecliffe Esplanade SEAFORTH NSW 2092
Mr Shane Henry	31 Alan Avenue SEAFORTH NSW 2092
Mrs Sejal Monik Kotecha Outlook Planning & Development	25 Alan Avenue SEAFORTH NSW 2092
Mrs Kathryn Elizabeth Whiting	62 A Edgecliffe Esplanade SEAFORTH NSW 2092

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

- The proposed development is out of character for the area with regards to building design and subdivision pattern.
- The building is excessive in size, bulk and scale and is non-compliant withe side setbacks, wall height and number of stories
- Impact upon adjoining properties as a result of excavation for the proposed development
- Visual privacy and overlooking impact for adjoining properties
- Solar access impact upon adjoining properties
- Noise from pool filters and pumps
- Proposed vegetation along the rear boundary will create overshadowing
- The FSR calculation excludes the garage, plant and store area. The garage is not considered to be a basement the floor level of the storey immediately above is greater than 1m above ground level. The proposal is therefore non-compliant with FSR.

The matters raised within the submissions are addressed as follows:

- *The proposed development is out of character for the area with regards to building design and subdivision pattern.*
  Comment:
  A full assessment has been undertaken with regards to the subdivision pattern and character of the development at the beginning of this report, including an assessment against the reasons for refusal. The amended plans have been considered against the planning principles established by *Project Venture Developments v Pittwater Council (2005) NSWLEC 191* with regards to compatibility of the development in the streetscape and the proposal is considered consistent with the planning principle. For this reason, the proposal is recommended for approval.

- *The building is excessive in size, bulk and scale and is non-compliant withe side setbacks, wall height and number of stories*
  Comment:
  A merit assessment has been undertaken later within this assessment report against each of the above controls, in addition to the assessment against the planning principles for streetscape character. The proposed development achieves the objectives of each of the controls, notwithstanding the numerical non-compliances and is therefore supported on merit.

- *Impact upon adjoining properties as a result of excavation for the proposed development*

Comment:
Conditions of consent have been recommended for dilapidation reports to be prepared for 25 and 29 Alan Avenue. The application is accompanied by a geotechnical report which makes reference to the updated plans and the recommendations of the geotechnical report are to be included as recommended conditions to ensure the development is carried out in a way that will not cause impacts or hazards for adjoining properties.

- *Visual privacy and overlooking impact for adjoining properties*
  Comment:
  As assessment regarding visual privacy and overlooking carried out later within this assessment report, including details of the measures proposed to minimise direct overlooking. The assessment concludes the proposal does not have a unreasonable impact.

- *Solar access impact upon adjoining properties*
  Comment:
  An assessment against the solar access controls are carried out later within this assessment report. The proposal will maintain a reasonable level of solar access for adjoining properties, as discussed later in this report.

- *Noise from pool filters and pumps*
  Comment:
  Conditions of consent have been recommended to require pool equipment to not generate noise above 5dbA background noise levels. In addition, the proposed pool filters are housed within a soundproof structure and located a minimum 1m from the rear boundary. The combination of the soundproof structure and conditions of consent are considered to address this in a reasonable way.

- *Proposed vegetation along the rear boundary will create overshadowing*
  Comment:
  A condition of consent is recommended for the proposed landscape screening along the southern boundary to be of a species that will not exceed 3m in height at maturity to ensure reasonable prviacy is able to be maintained between properties, whilst limiting overshadowing for the southern property.

- *The FSR calculation excludes the garage, plant and store area. The garage is not considered to be a basement the floor level of the storey immediately above is greater than 1m above ground level. The proposal is therefore non-compliant with FSR.*
  Comment:
  A detailed assessment against the definition of 'Gross floor area' as defined within the LEP and the definition of a 'basement level' has been considered in calculating the FSR. The LEP definition of GFA excludes garages and plant rooms, as well as basement storage. The storage area is considered to be 'basement stoage' as the floor level above is no greater than 1m above the ground level, as demonstrated in section A and Section B of the submitted plans. Therefore, the proposed floor space has been calculated in accordance with the LEP definition and the proposal is compliant with the development standard.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	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.
Landscape Officer	The application is for demolition, torrens title subdivision of 1 Lot into 2 Lots and the construction of a dwelling house and swimming pool on each Lot. The review application documents includes minor landscape changes including planter box arrangement within the front setback. No revised Landscape Plans are provided with the review application, and conditions of consent shall be imposed for updated landscape plans to be coordinated with the updated architectural plans should the application be approved. An updated Arboricultural Impact Assessment is provided inclusive of no changes to the request for tree removal from DA2019/1447. All street trees along the road reserve of Alan Avenue are listed as items of Local Heritage value (i264) within the Manly Local Environmental Plan, including the central medium along Alan Avenue and the Brushbox fronting the development site. A Tree Protection Plan is required for the existing Brushbox and additionally the Tree Protection Plan shall provide comments on the protection advice of all other Local Heritage Trees in the road reserve to be protected from impacts from construction deliveries and illegal storage or dumping. Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types. The review application is assessed by an alternative Landscape Referral Officer to DA2019/1447. The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation and the completion of landscaping.
NECC (Development Engineering)	The applicant has not provided a stormwater management plan in this review application. In accordance with the stormwater management plan of the DA2019/1447, Development Engineering has no objection to the application. The stormwater plan, which was prepared by NB Consulting Engineers, job number 1909132, dated 6/12/2019, must be submitted and formed a part of this approval.

Internal Referral Body	Comments
	If any change of the stormwater plan, this application shall be referred back to Development Engineering for assessment and comment.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject site adjoins a heritage item **I264 - Street Trees** - Alan Avenue Details of heritage items affected Details of the item as contained in the Manly inventory is as follows: <u>Statement of significance:</u> Historic and aesthetic street tree planting and streetscape. <u>Physical description:</u> Ficus Rubigninosa trees as centre road planting. Unique layout to Manly. Other relevant heritage listings Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 — No Australian Heritage Register — No NSW State Heritage Register — No National Trust of Aust (NSW) Register — No RAIA Register of 20th Century Buildings of Significance — No Other — N/A Consideration of Application The proposal seeks consent for the construction of two dwellings and the torrens title subdivision of 27 Alan Avenue. Heritage notes this is a review of determination application following on from the refusal of the previous application known as DA2019/1447 on the site. While the proposal has been modified, Heritage's comments remain mostly the same as per the previous application. The proposal is considered to not impact upon the significance of the heritage items. Heritage recommends one condition that the heritage street trees be protected during construction works. Therefore Heritage raises no objections and requires one condition. Consider against the provisions of CL5.10 of MLEP.

Internal Referral Body	Comments
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No Further Comments COMPLETED BY: Brendan Gavin, Principal Planner DATE: 16 March 2021

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

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. 105366S_02 and 1063239S_02 dated 11 February 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	81

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 issues were raised by ausgrid subject to their usual terms and conditions.

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
Minimum subdivision lot size:	600sqm	Lot 1: 613.17sqm Lot 2: 613.7sqm	N/A	Yes
Height of Buildings:	8.5m	8.2m from NGL	N/A	Yes
Floor Space Ratio	FSR: 0.45:1	FSR: 0.446:1	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	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

The objectives of Clause 6.2 - 'Earthworks' require development:

(a) 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, and
(b) to allow earthworks of a minor nature without requiring separate development consent.

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 watercourse, 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.

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

6.4 Stormwater management

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

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

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

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

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

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

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1226.3sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 2 dwellings	2 dwellings (1 dwelling per new	N/A	Yes

		lot)		
	Dwelling Size: 124sqm (minimum)	27 Alan 270.2sqm 27A Alan 276.7sqm	N/A	Yes
4.1.2.1 Wall Height	E: 6.8m (based on gradient 1:20)	6.5m - 7.1m	4%	No
	W: 6.8m (based on gradient 1:20)	5.9m - 7.4m	9%	No
4.1.2.2 Number of Storeys	2	2 - 3 stories	33%	No
4.1.2.3 Roof Height	Height: 2.5m	1.1m	N/A	Yes
	Parapet Height: 0.6m	0.3m	N/A	Yes
	Pitch: maximum 35 degrees	2 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line 7.85m / 6m minimum (average of two adjoining)	27 Alan 7.715m 27A Alan 8.815m	1.7%	No Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	27 Alan East - 2.16m to 2.36m 27 Alan West - 2.13m to 2.33m 27A Alan East - 1.96m to 2.33m 27A Alan West - 1.96m to 2.46m (based on varied proposed wall height)	1.7m - 3.6m 1.3m - 2.9m 1.3m - 3.05m 1.71m - 3.51m	0% - 28%	No
	Windows: 3m	1.3m minimum	56%	No
4.1.4.4 Rear Setbacks	8m	27 Alan 18.2m 27A Alan 18.3m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (674.5sqm)	55% (676.5sqm)	N/A	Yes
	Open space above ground 25% of total open space (168.7sqm)	13% (91sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (236.1sqm)	69% (465sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	Minimum 18sqm per dwelling provided	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or	Maximum 50% of frontage up to maximum	4.9m / 48%	N/A	Yes

Hardstand Areas	6.2m			
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	In ground pool	N/A	Yes
	1m curtilage/1.5m water side/rear setback	1m curtlidge side/1.5m water side/7m rear	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces per dwelling	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The issue of compatibility with the streetscape is discussed in detail earlier in this assessment report in response to the reasons for refusal of the original DA, whereby an assessment is made against the planning principles as established by the Land and Environment Court case *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268* and Project Venture Developments v Pittwater Council (2005) NSWLEC 191.

Following assessment against this planning principle the proposal is found to be compatible with the streetscape character and therefore consistent with the planning controls which require development to complement (but not necessarily replicate) the predominant building form, distinct building character, building material and finishes and architectural style in the locality.

3.4.1 Sunlight Access and Overshadowing

The DCP requires the following in regards to solar access for a north-south facing lot:

- adjacent buildings the level of solar access presently enjoyed must be maintained to windows and glazed doors of living rooms for a period of at least 4 hours 9am to 3pm mid-winter.
- New development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm mid-winter.

A review of the floor plans for 29 Alan Avenue show that the eastern elevation consists of a ground floor window to a garage and a window to a dining room. For the purpose of this control, the garage window is not required to receive solar access (as it is not a habitable space). The proposed development will result in some additional overshadowing to the eastern facing dining room window, as shown in the submitted elevation shadow diagrams.

It is considered however, that this window would be susceptible to overshadowing from any two storey development on the subject site, and retention of a full 4 hours would be difficult noting that solar access is not possible during the afternoon period, being an eastern facing window.

However, the dwelling at 29 Alan Avenue has a north facing family room which directly adjoins the pool area, this window will receive a minimum 4 hours and will not be impacted by the development. Therefore, although some additional overshadowing will result to the dining room area as a result of the site orientation, a high level of solar access will be maintained to the north facing family room which is considered a reasonable outcome and retention of solar access for the adjoining property.

The dwelling on 25 Alan Avenue will maintain solar access in accordance with the controls, with only a minor amount of overshadowing to the rear yard at 3pm mid-winter.

The applicant has demonstrated in the submitted shadow diagrams that solar access will be maintained to the adjoining properties private open space in accordance with the control, which takes into consideration the north facing pool area for 29 Alan Avenue.

3.4.2 Privacy and Security

It is noted that the first floor of the proposed dwellings contain bedrooms, bathrooms and circulation spaces only. None of these spaces are considered to give rise to a unreasonable visual privacy impact or a high occupancy rooms (unlike a living room, dining room or kitchens, which are all located on the ground floor of the proposed development).

However, in consideration of the reasonable retention of privacy for the two adjoining properties, the following has been proposed:

Eastern Elevation 27 Alan Avenue

- Obscure glazing up to 1.5m for WA.16, WA.18 and WA.19 upon first floor.
- Highlight window along stairwell first floor.
- Front elevation balcony setback and separated by planter box.

Western Elevation of 27A Alan Avenue

- Fixed privacy screen 1.65m from floor level for the front elevation balcony to prevent direct overlooking of pool within front setback of 25 Alan Avanue.
- Fixed external privacy screens for WB.21, WB.22, WB.24, WB.26, WB.27.
- Obscure glazing up to 1.5m for WB.28.
- Obscure glazing up to 1.5m fro WB.13 which is a ground floor window (to prevent overlooking of pool within front setback of 25 Alan Avenue).

Overall, the proposed development has implemented appropriate measures to mitigate direct overlooking impacts for adjoining properties.

3.9 Mechanical Plant Equipment

The proposed development includes a nominated plant room within each dwelling which measures 2.5m x 5.4m. The DCP allows for a plant room to be provided for a residential dwelling, provided it is not excessive in size and is used for the purpose of a plant room only, and therefore would not contribute to additional floor space within the development.

The proposed plant room is considered reasonable in size, matching the width of the proposed garage (which makes structural sense) and a depth of 2.4m, to allow plant and reasonable access to that plant. Any air-conditioning units, heating/cooling systems or future battery systems for the proposed photovoltaic panels can be reasonably accommodated within this subfloor space and will allow any noise of unsightliness to be contained within the plant room. The proposed plant room is therefore supported.

It is noted that the definition of 'gross floor area' within the Manly LEP excludes 'plant rooms' from the GFA calculation. It also excludes 'basement storage' from the GFA calculation. Therefore, the area of basement storage and the plant room does not contribute to FSR of the development as per the definition in the Manly LEP.

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

DCP Control

The DCP requires that buildings are a maximum of 2 stories. The proposed development is majority 2 stories, however the following portions of the development are 3 stories as described below and in the below figure:

- 27 Alan 1.6m length of building footprint, or 5% of the building footprint.
- 27A Alan 2.5m length of the building footprint, or 8% of the building footprint.

Figure 1 - Section plan showing area of three storey building.

The DCP requires that the building have a maximum wall height based on the height on gradient of the land. In the case of the subject site, the average gradient across the building footprint is 1:20 and therefore the maximum wall height is 6.8m. The development has a wall height of between 6.5m and 7.4m, with the non-compliance shown in the below figures. The non-compliance is a point encroachment, with the majority of the building compliant with wall height.

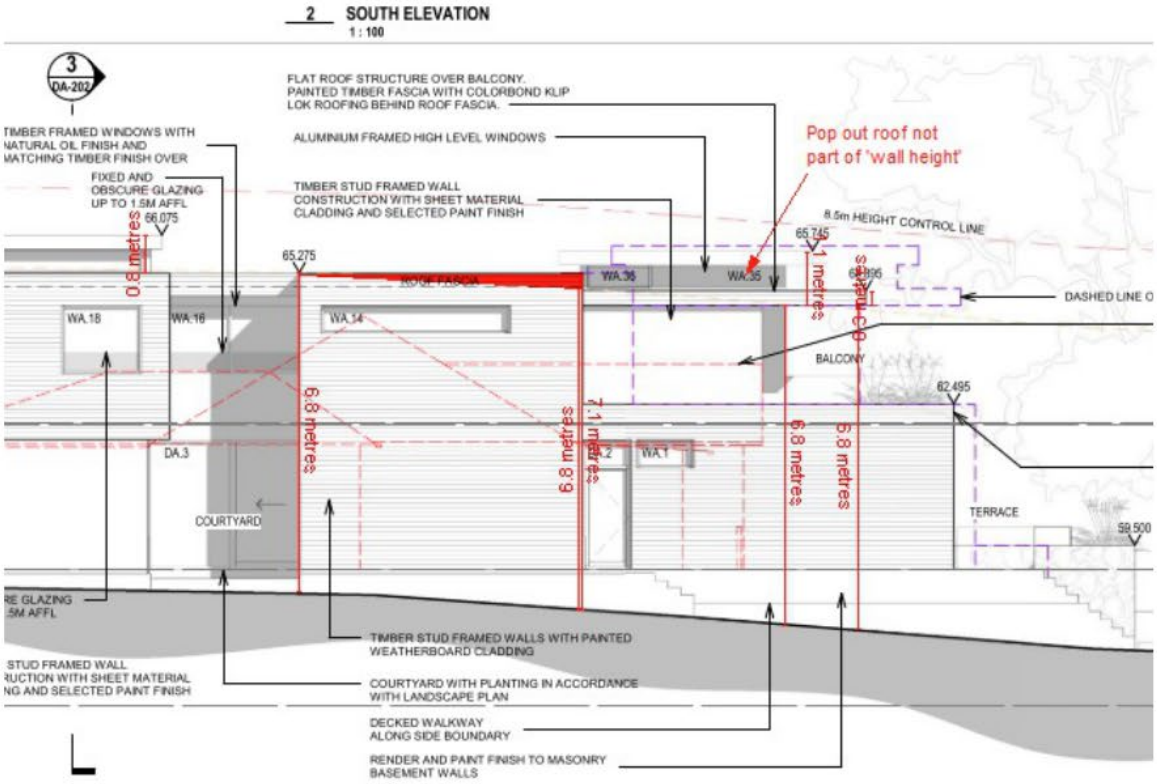


Figure 2 - East elevation of 27 Alan Avenue showing area of wall height non-compliance.

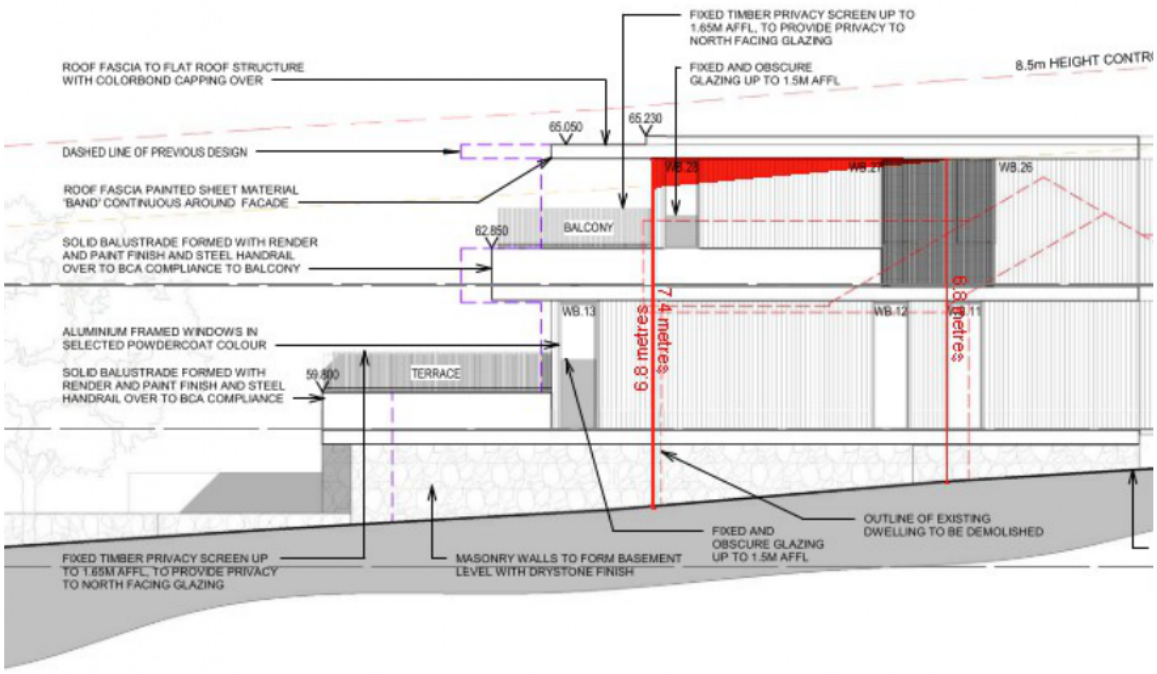


Figure 3 - 27A Alan western elevation showing area of wall height non-compliance.

Merit Consideration

In considering a variation to the control, the application is assessed against the objectives of the control as follows (which are the same objectives for the height of buildings development standard).

(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 character of the locality is predominantly one and two story dwellings, with an occasional three storey dwelling in the vicinity of the site. It can be said that the 8.5m maximum building height development standard sets out the expected scale of the development in terms of height for the desired future character of the locality and the proposed development is compliant with this development standard. It is therefore considered that the height of the building is within the expectations of the desired future character, being compliant with the development standard. A full assessment against the planning principle in regards to character is undertaken earlier in this report.

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

Comment: The proposed development has been amended to step back with the topography of the land and include open balcony and terrace features at the upper levels to break up the bulk and scale of the facade. The proposed development is an improvement over the previous design, which reduces the extent of the development which is three stories and further modulates the front building facade. The

point encroachment for the wall height are not considered to render the development excessive in bulk and scale.

The proposed development has been amended from the previous proposal to comply with floor space ratio to reduce the bulk and scale and be within the expected maximum floor area for the locality. The portion of development that is three stories is relatively minor in the context of the building (5% and 8% of the building footprint length) and is located within the subfloor, not directly visible from the street.

(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 result in view impacts.

(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 application demonstrates that a reasonable amount of solar access is retained to the private open space and living room windows of the adjoining properties. This is explored in detail elsewhere within this report.

(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 to this site.

The proposed development is considered to meet the objectives of the control, notwithstanding numerical non-compliance. Therefore, the variation to the control is supported in this particular circumstance.

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

DCP Control

The DCP requires the front setback to be consistent with the prevailing building line, or 6m, whichever is the greater. The prevailing building line is taken to be the average of the two adjoining properties (in this case 25 and 29 Alan Avenue). This results in a predominant building line of 7.85m. The proposed dwelling on 27 Alan Avenue is 7.715m (non-compliant by 135mm) and the building on 27A Alan Avenue is compliant at 8.815m.

However, the above setbacks are considered an appropriate 'transition' along the streetscape, as the garage on 25 Alan Avenue is set at 7.6m and forward of the proposed development on 27 Alan Avenue. The building on 27A Alan Avenue is setback further in response to the 8m setback of 29 Alan Avenue. Each dwelling is therefore setback behind the each respective adjoining property.

The DCP requires side setbacks to be provided at one third of the proposed wall height. Due to the sloping nature of the site, the side setbacks are varied across the building footprint based on the wall height of between 1.96m and 2.46m, depending on the section of building. The development provides a minimum 1.7m setback to the two adjoining existing properties and a 1.3m setback to the internal boundary between the two dwellings. In addition, an internal courtyard is proposed to provide modulation and break up the side elevation of each dwelling and this section is compliant with the side

setback.

The DCP requires windows to be setback 3m from the side boundary. The proposal includes windows 1.3m-1.7m from the side boundary. However, the proposed windows within the development have been provided with a privacy treatment where necessary to limit direct overlooking.

Merit Consideration

In considering a variation to the controls, the proposal is assessed against the 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 streetscape is characterised by landscaped front setbacks with a variety of low lying trees and taller canopy trees throughout the front setback area. The proposed front setback non-compliance of 135mm for 27 Alan Avenue is not visually discernible from the street and provides an appropriate transition between the existing dwellings in the street and proposed development.

The proposed development provides a sufficient amount of deep soil area within the front setback to provide canopy tree planting to meet the landscape character of the locality, with additional planter boxes used on the upper terrace of 27 Alan Avenue and planter boxes adjoining the dwelling entrance on 27A Alan Avenue. The proposal retains a significant tree (Port Jackson Fig) in the front setback area in front of 27 Alan Avenue. Council's landscape officer has provided conditions to ensure adequate soil depth is used to facilitate planting to add to the landscaped setting. Another canopy tree is provided in front of 27A Alan Avenue to add to the landscape street character.

Objective 2) To ensure and enhance local amenity by:

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

Comment: The proposed development is found to provide a reasonable level of solar access and maintain visual privacy for the adjoining developments as discussed in detail elsewhere within this report. The proposal does not result in a view impact. The proposal does not compromise traffic safety.

In regards to appropriate space between buildings, the proposed 1.7m setback to the southern property at 29 Alan Avenue is sufficient to establish landscape planting (as proposed in the landscape plan) to soften the development and contribute to the landscape character of the development.

The eastern setback area of the dwelling on 27 Alan Avenue proposes a timber deck, to give access to the laundry and internal courtyard. The inclusion of this timber deck reduces the ability to provide meaningful deep soil planting along the boundary. Therefore, a condition of consent is recommended to delete the timber deck and stairs within the eastern side setback of 27 Alan Avenue and to replace with soft landscaping and landscape planting adjoining the boundary. A landscape pathway may be provided within the setback to provide access to the rear yard, as reflected in the proposed condition.

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

Comment: The building is configured to allow across and maintenance around the building footprint.

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 provides a compliant amount of landscape open space and deep soil zone to provide landsacpe planting in the front and rear setback, as well as centrally within the internal courtyards.

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

Comment: Not applicable to this development.

Overall, the proposed development is considered to meet the objectives of the development standard and a variation to the control is supported in this particular circumstance.

4.4.5 Earthworks (Excavation and Filling)

The application is accompanied by a geotechnical report which makes recommendations to ensure the works are carried out in a way that does not impact adjoining properties. The recommendations of the geotechnical report will be incorporated in to the consent conditions.

The natural ground levels are maintained within 0.9m of the side setback area, as required by the DCP.

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 $24,310 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,431,000.

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

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

- Variations to the DCP with regards to setbacks, wall height and number of stories.
- Assessment of the amended plans against the reasons for refusal of DA2019/1447; and
- The issues raised in the public submissions.

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 REV2021/0009 for Review of Determination of Application DA2019/1447 for demolition works, Torrens Title subdivision of 1 lot into 2 lots and construction of a dwelling house and swimming pool and fencing on each lot on land at Lot 81 DP 4889, 27 Alan Avenue, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
   The development must be carried out in compliance (except as amended by any other condition

of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA-000, Issue 3	17/02/2021	Buck and Simple
DA-100, Issue 3	17/02/2021	Buck and Simple
DA-101, Issue 3	17/02/2021	Buck and Simple
DA-200, Issue 3	17/02/2021	Buck and Simple
DA-201, Issue 3	17/02/2021	Buck and Simple
DA-202, Issue 3	17/02/2021	Buck and Simple
DA-700, Issue 1	17/02/2021	Buck and Simple
DA910, Issue 1	17/02/2021	Buck and Simple
DA911, Issue 1	17/02/2021	Buck and Simple
DA-930, Issue 1	17/02/2021	Buck and Simple
DA-940, Issue 1	17/02/2021	Buck and Simple
DA-960, Issue 1	17/02/2021	Buck and Simple

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
D01, D02 and D04 Issue B, D03 and D05 Issue A	6/12/2020	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboricultural Impact Assessment	6 February 2021	Tom Hare
Geotechnical Investigation J2403A	29 April 2021	White Geotechnical Group

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

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
LSCP 1676	25 October 2019	Tranquillity Landscape Design

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**

Waste Management Plan	16 December 2020	Darren O'Hanlon

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

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

2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that

occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

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

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of $24,310.00 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 $2,431,000.00.

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

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

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

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

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

5. **Security Bond**

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

An inspection fee in accordance with Council adopted fees and charges (at the time of payment)

is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

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

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

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

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

6. **Amended Landscape Plan**
Amended Landscape Plans based on drawing numbers LSCP 1376 documents 1 Landscape Site Plan, 2 Front Detail, and 3 Rear Detail, shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:
i) landscape works are to be coordinated with the architectural layout,
ii) all nominated tree planting (Syzygium oleosum and Tristaniopsis laurina 'luscious') within the site shall be minimum 75 litre container size, and 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, and at least 2 metres from common boundaries,
iii) tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views,
iv) all nominated Rhapiolepis species (capable of self seeding into natural bushland) shall be deleted and replaced with a similar shrub species in form and size.
v) The landscaping along the southern (rear) boundary is to be a species that is capable of not reaching a mature height greater than 3m.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

7. **Heritage Listed Trees**
The site is adjacent to Heritage Listed Trees as identified in the Local Environmental Plan under Schedule 5, item 264. Heritage Listed Trees are to be protected from damage during construction, including:
i) street trees located within the central median and within road verges fronting residential lots.

A Tree Protection Plan is to be prepared by an Arborist with minimum AQF Level 5 in arboriculture incorporating the following:
ii) protection of the existing Brushbox located within the frontage of the development site and as protected under Appendix 3 of the Arboricultural Impact Assessment,
iii) tree protection plan for other street trees within Alan Avenue incorporating commentary on general tree protection measures such as delivery of construction materials, restrictions on motor vehicles access upon the central median and road verges, and restrictions on storage upon the central median and road verges.

All tree protection measures shall be in accordance with AS4970 Protection of Trees in Development Sites.

The Tree Protection Plan for the Heritage Listed Trees shall be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of significant community assets.

8. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- The deck along the eastern edge of the proposed dwelling on 27 Alan Street shall be deleted and replaced with soft landscaping along the boundary. A landscaped pathway (including landscape pavers) may replace the deck.

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

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

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

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

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

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

10. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater management in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003, and generally in accordance with the concept drainage plans prepared by NB Consulting Engineers, job number 1909132, dated 06/12/2019. Detailed drainage plans are to be prepared by a suitably qualified Civil
Engineer.
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.

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

Engineer, except where site conditions permit the following:

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

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

Reason: To provide public and private safety.

12. **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.

13. **Protection Of Heritage Listed Street Trees**
a) The street trees in Alan Avenue are heritage listed trees under Schedule 5 of Manly LEP 2013. The heritage listed trees are to be protected from damage during construction.
b) Details of the method of protection of the trees must be submitted to the Certifying Authority by the Project Arborist for approval prior to the issue of the Construction Certificate.
c) Annotated photographs of the trees, with particular emphasis on the lower part of the trees, must be submitted to the Certifying Authority prior to the commencement of any building work.

Reason: To ensure appropriate tree protection measures are adopted to preserve significant community heritage assets.

14. **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

15. **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) demolition of existing front wall and pier & beam construction near street tree identified as number 1 (Brushbox),
ii) demolition works and construction footing piers near existing tree identified as 2 (Port Jackson Fig),
iii) ground, trunk and branch protection works for existing trees identified as as number 1 (Brushbox) and 2 (Port Jackson Fig),
iv) tree protection works for existing trees identified as number 1 (Brushbox), 2 (Port Jackson Fig), 3 (Brushbox), and 6 (Macadamia),
v) all works under the Tree Protection Plan, including protection of Heritage Listed Trees.

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.

16. **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 numbered 4 (Bracelet Honey Myrtle)
ii) tree numbered 5 (Narrow-leaved Black Peppermint

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.

17. **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: 25 Alan Avenue and 29 Alan 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 rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

18. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **Protection of Rock and Sites of Significance**
All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

20. **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.

Any tree protection fencing for street trees as advised by the Project Arborist 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.

21. **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 complaint 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.

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

Reason: Public safety.

23. **Demolition Works - Asbestos**
Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

24. **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.

25. **Vehicle Crossings**
The Applicant is to construct 2 vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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

26. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Amended Landscape Plan.

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.

27. **Condition of Retained Vegetation - Project Arborist**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:
a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
b) extent of damage sustained by vegetation as a result of the construction works,
c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

28. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian

Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

29. **Post-Construction 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.

30. **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.

31. **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.

32. **Swimming Pool Requirements**
The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
(i) Swimming Pools Act 1992;
(ii) Swimming Pools Amendment Act 2009;
(iii) Swimming Pools Regulation 2008
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

33. **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 Amended Landscape Plans 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.

34. **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 me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **Swimming pool filter and air-conditioning units (noise)**
The swimming pool filters and air-conditioning units are not create any noise which exceeds over 5dB (A) above the ambient background noise levels when measured from any property boundary.

Reason: Ensure reasonable acoustic amenity.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

36. **Provision of Services for Subdivision**
The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

37. **Sydney Water Compliance Certification**
The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <http://www.sydneywater.com.au> then refer to “Water Servicing Coordinator” under “Developing Your Land” or telephone 13 20 92 for assistance.

Following application a “Notice of Requirements” will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

38. **Release of Subdivision Certificate**
The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council’s subdivision standards and the statutory requirements of the Conveyancing Act 1919.

39. **Subdivision Certificate Application**

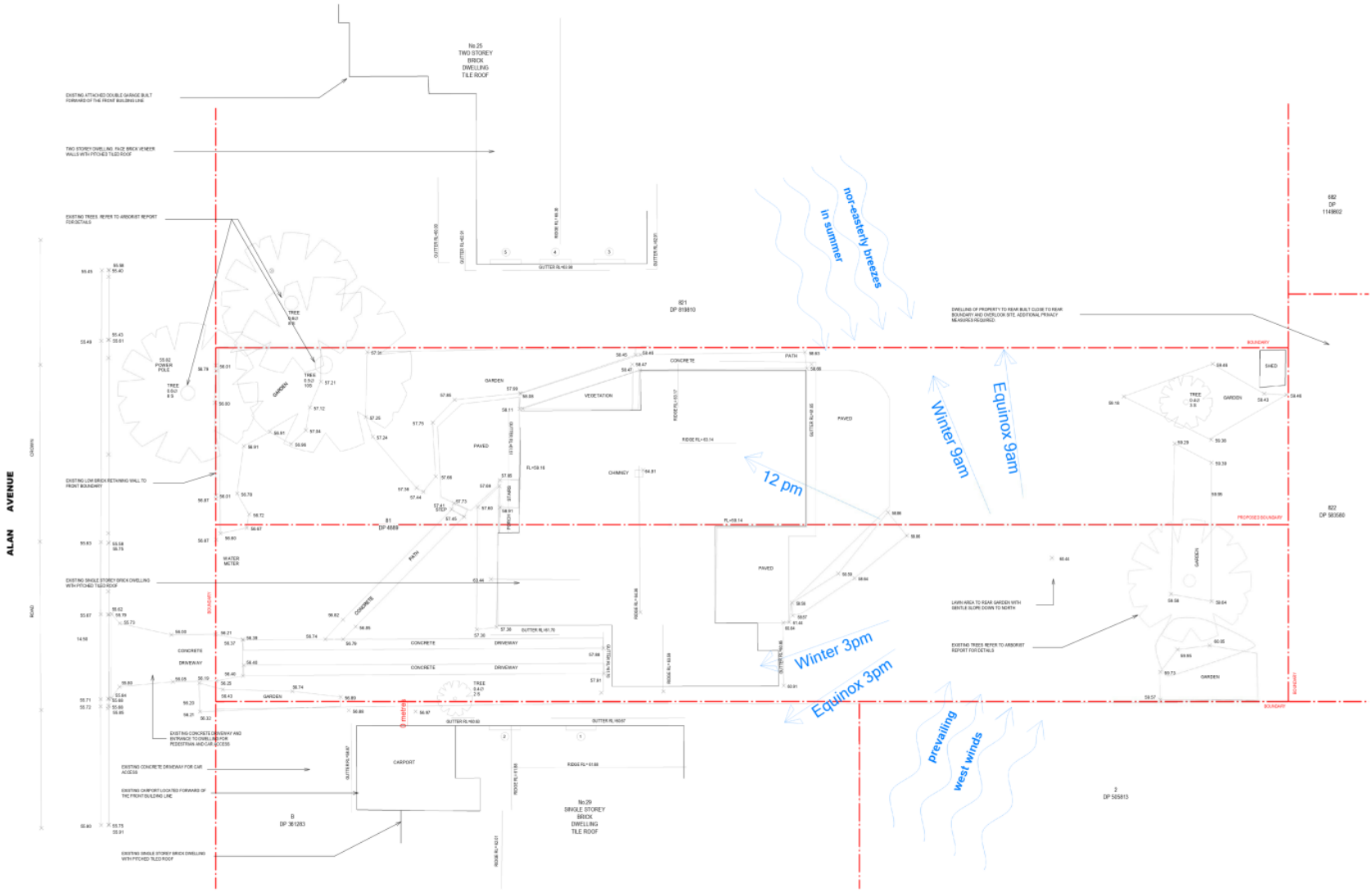
The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

40. **Title Encumbrances**
The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.



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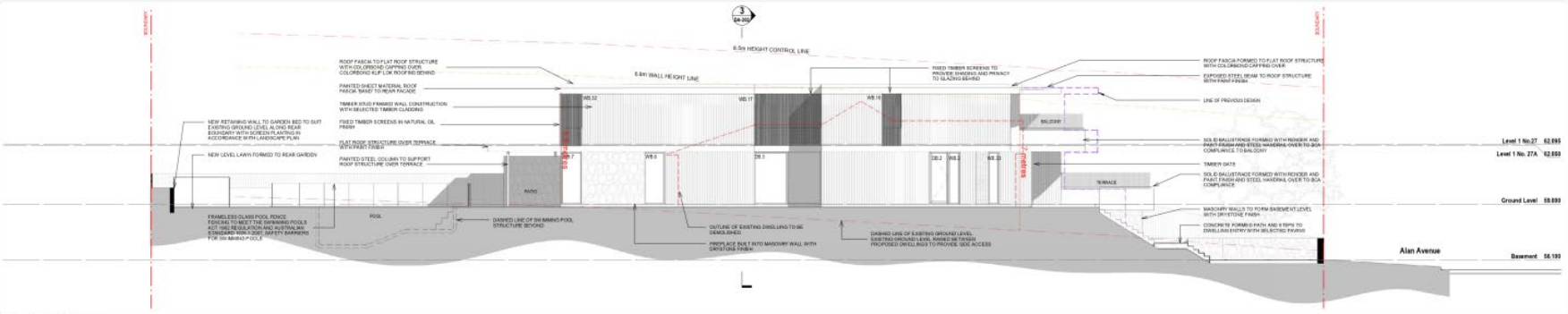
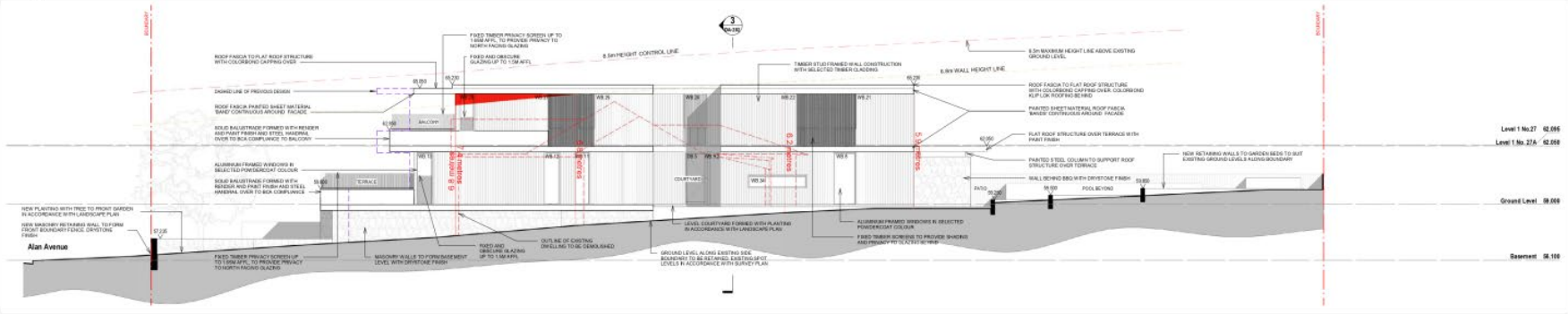
Development Application

No.	Description	Date
1	Issue for Development Application	17.02.2021

Project	Alan Ave	Scale @ A1, A3 half indic. 1 : 100	Drawn by BS / Checked by BS
Location	27 Alan Avenue, Seaforth NSW 2092	Project Issue Date Oct 2020	Sheet Issue Date 17.02.2021
Client	O'Hanlon, Gluliano & El Khouri	Project number 1141	Drawing # DA-920 / Issue 1
Drawing	Site Analysis		



1 NO. 27A EAST ELEVATION
1 : 100



2 NO. 27A WEST ELEVATION
1 : 100

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General Notes		No.	Description	Date
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Project	Alan Ave	Scale @ A1, A3 half indic.	Drawn by	Checked by
Location	27 Alan Avenue, Seaforth NSW 2092	1 : 100	BS	BS
		Project Issue Date: Oct 2020	Sheet Issue Date: 17.02.2021	
Client	O'Hanlon, Gluliano & El Khouri	Project number: 1141	Drawing #: DA-201	Issue: 3
Drawing	Elevations - Proposed			

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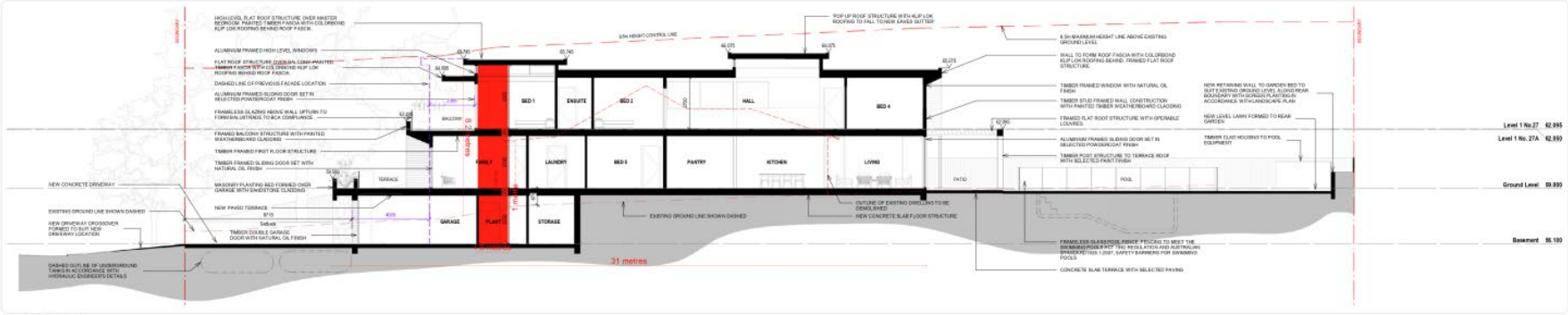
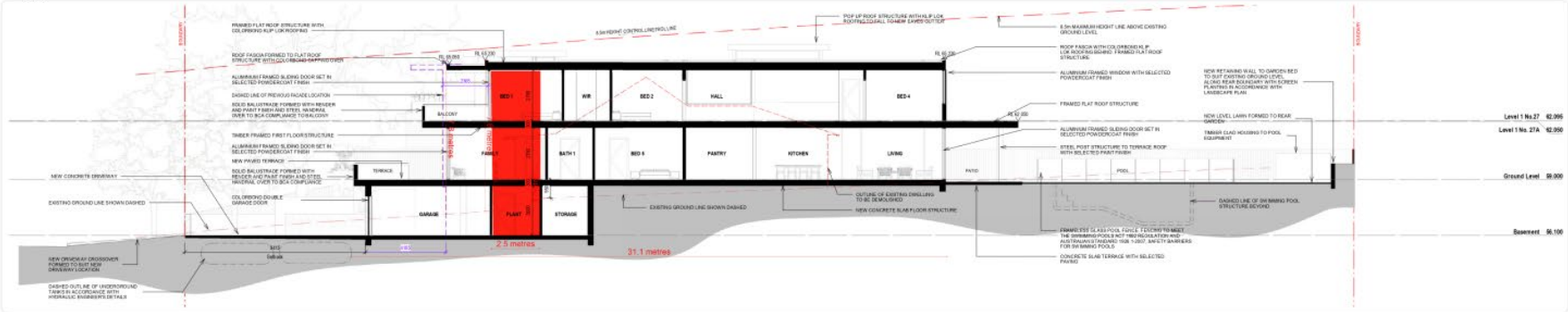
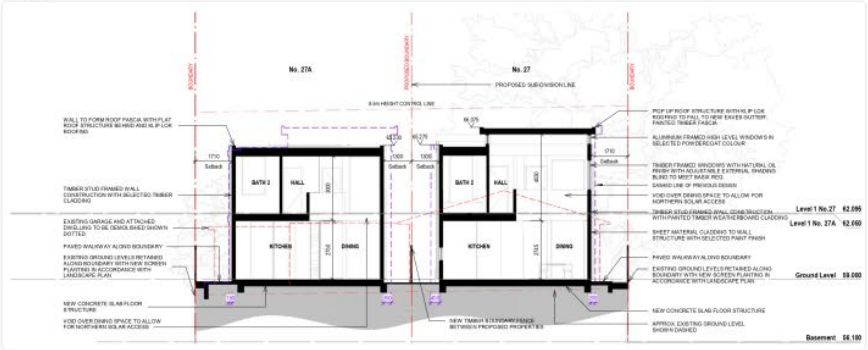


1 SECTION A - NO.27
1 : 100



2 SECTION B - NO.27A
1 : 100



3 SECTION C
1 : 100

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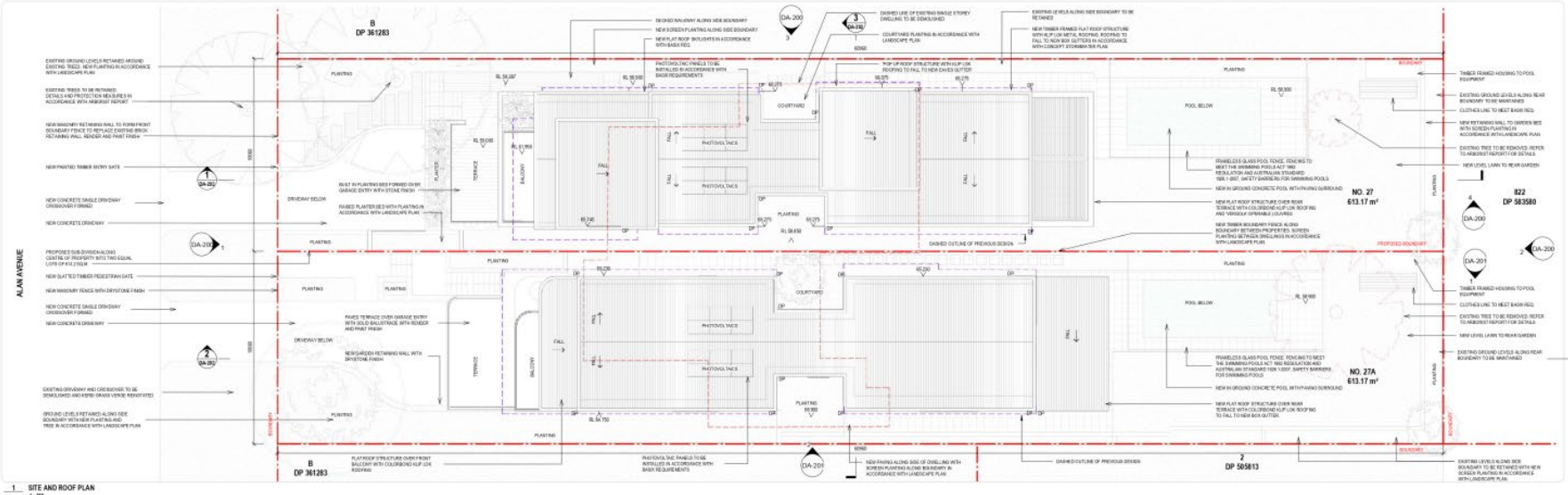
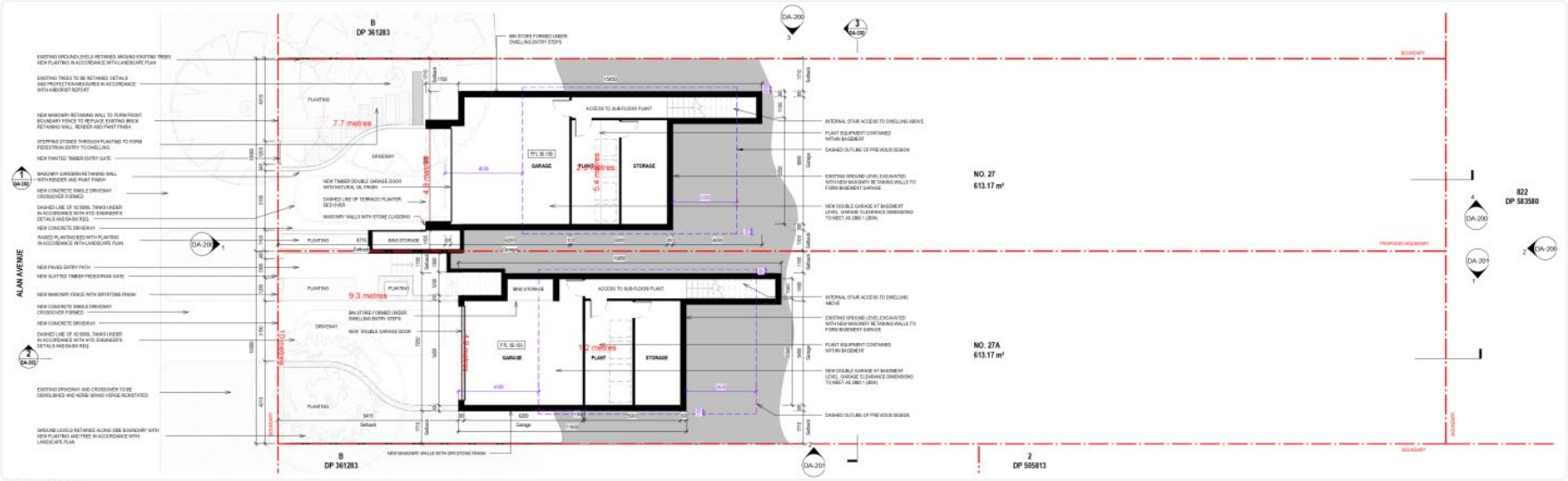
No.	Description	Date
1	Issue for Information	12.11.2020
2	Issue for Information	23.11.2020
3	Issue for Development Application	17.02.2021

Project	Alan Ave	Scale @ A1, A3 half indic. 1 : 100	Drawn by BS / Checked by BS
Location	27 Alan Avenue, Seaforth NSW 2092	Project Issue Date Oct 2020	Sheet Issue Date 17.02.2021
Client	O'Hanlon, Gluliano & El Khouri	Project number 1141	Drawing # DA-202 / Issue 3
Drawing	Sections		



1 SITE AND ROOF PLAN
1 : 100



2 BASEMENT PLAN
1 : 100

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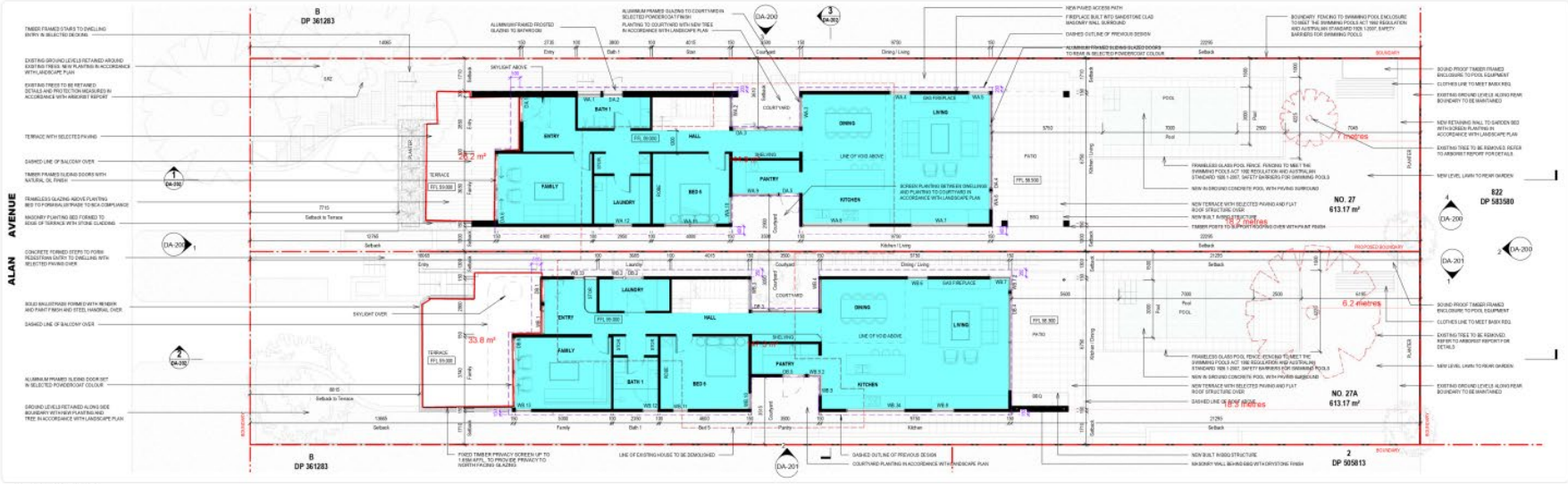
Project	Alan Ave	Scale @ A1, A3 half indic.	Drawn by	Checked by
		1 : 100	BS	BS
Location	27 Alan Avenue, Seaforth NSW 2092	Project Issue Date	Sheet Issue Date	
		Oct 2020	17.02.2021	
Client	O'Hanlon, Giuliano & El Khouri	Project number	Drawing #	Issue
		1141	DA-100	3
Drawing	Site/Roof Plan & Basement Plan			



1 GROUND FLOOR PLAN
1:100

2 FIRST FLOOR PLAN
1:100

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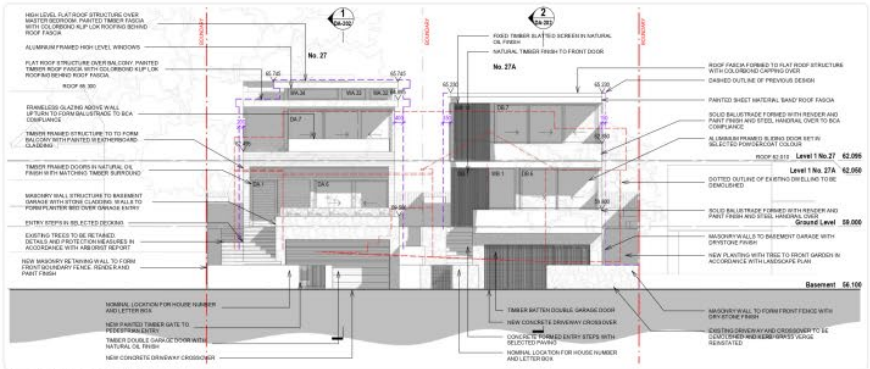
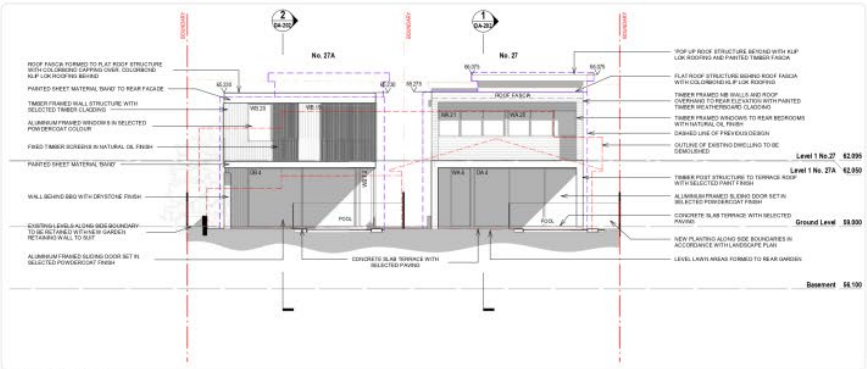
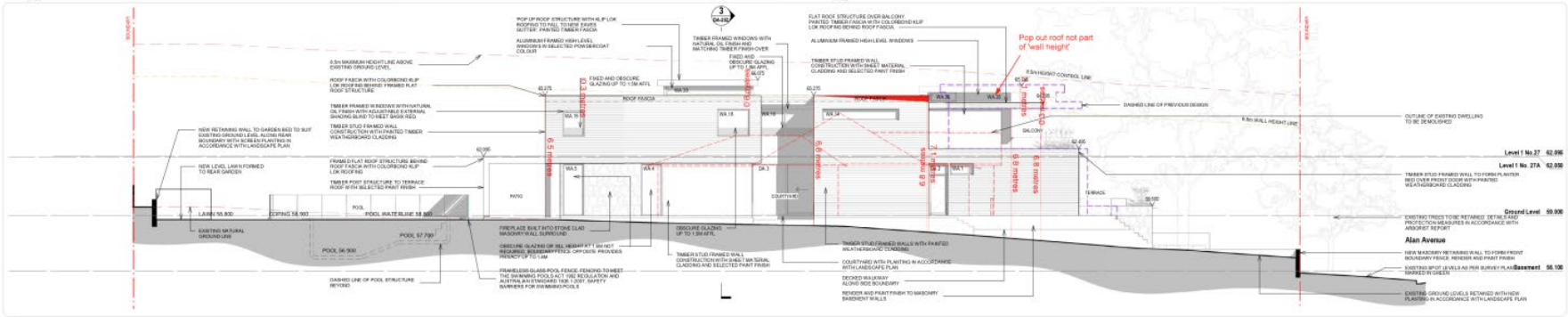
Project	Alan Ave	Scale @ A1, A3 half indic.	Drawn by	Checked by
Location	27 Alan Avenue, Seaforth NSW 2092	1 : 100	BS	BS
Client	O'Hanlon, Gluliano & El Khouri	Project Issue Date: Oct 2020	Sheet Issue Date: 17.02.2021	
Drawing	Ground Floor & First Floor Plans	Project number: 1141	Drawing #: DA-101	Issue: 3



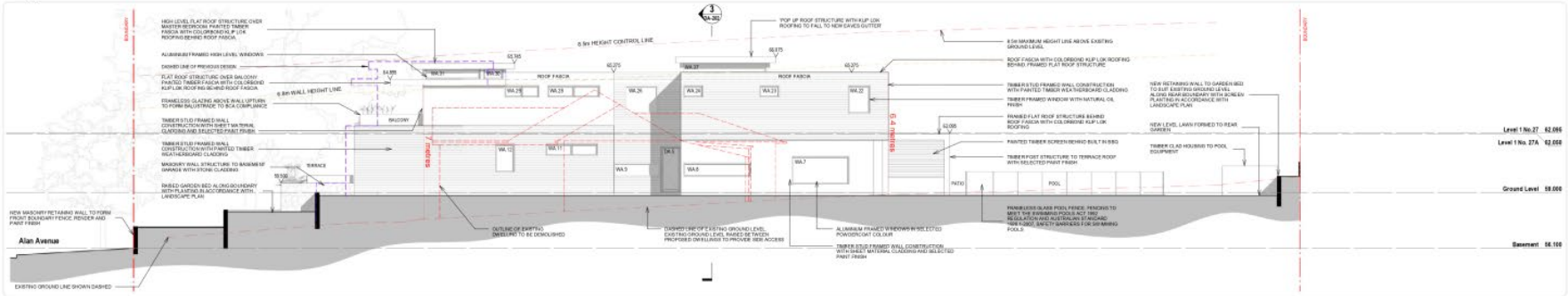
1 NORTH ELEVATION (ALAN AVE)
1 : 100



2 SOUTH ELEVATION
1 : 100



3 NO.27 EAST ELEVATION
1 : 100



4 NO.27 WEST ELEVATION
1 : 100

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No.	Description	Date
1	Issue for Information	12.11.2020
2	Issue for Information	23.11.2020
3	Issue for Development Application	17.02.2021

Project	Alan Ave	Scale @ A1, A3 half indic. 1 : 100	Drawn by BS / Checked by BS
Location	27 Alan Avenue, Seaforth NSW 2092	Project Issue Date Oct 2020	Sheet Issue Date 17.02.2021
Client	O'Hanlon, Gluliano & El Khouri	Project number 1141	Drawing # DA-200 / Issue 3
Drawing	Elevations - Proposed		

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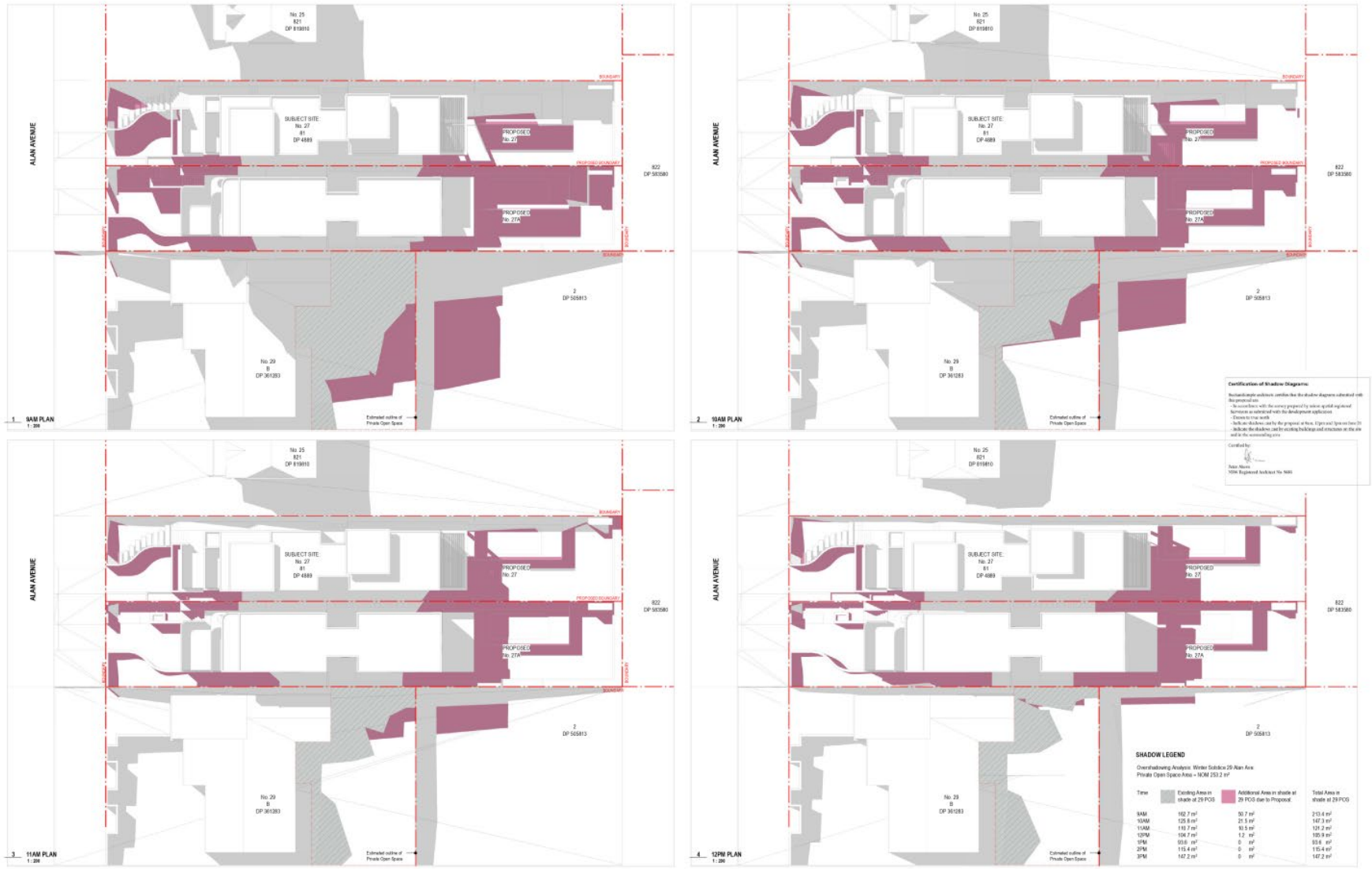

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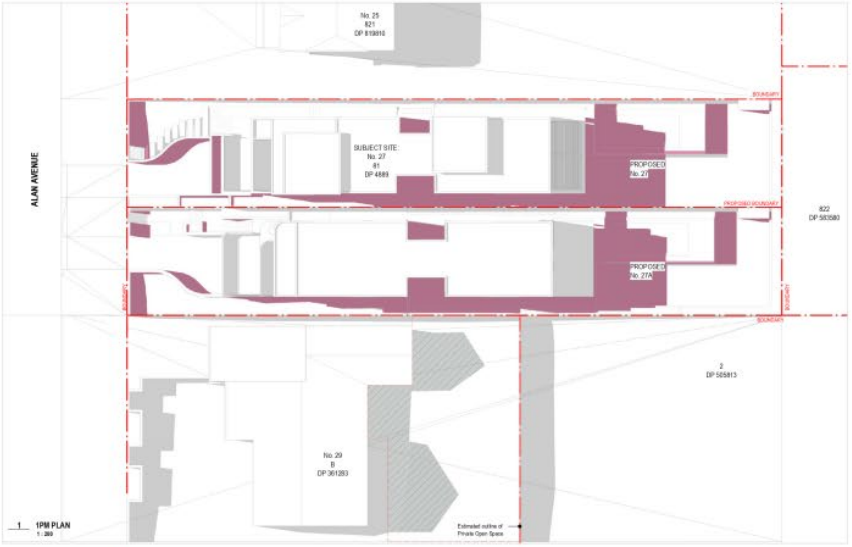
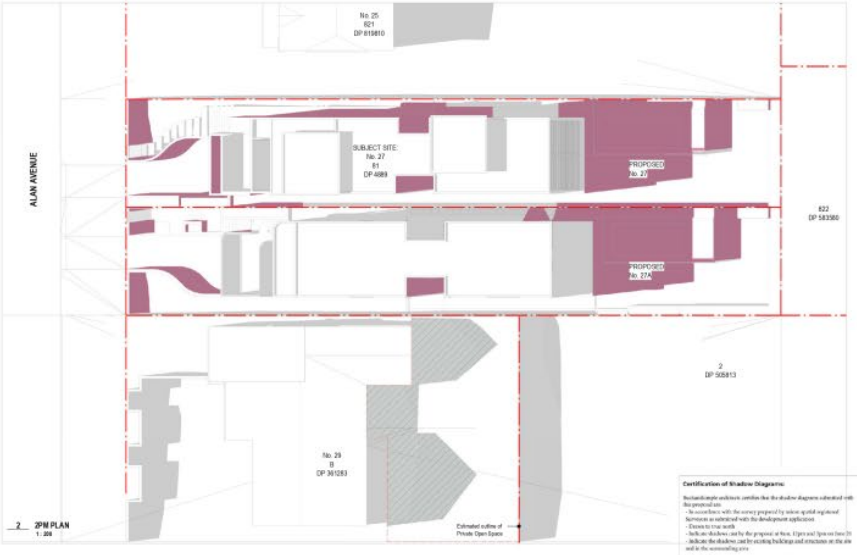
Development Application

No.	Description	Date
1	Issue for Development Application	17.02.2021

Project	Alan Ave	Scale @ A1, A3 half indic.	1 : 200
Location	27 Alan Avenue, Seaforth NSW 2092	Drawn by	BS
Client	O'Hanlon, Gluliano & El Khouri	Checked by	BS
Drawing	Shadow Diagrams	Project Issue Date	Oct 2020
		Sheet Issue Date	17.02.2021
		Project number	1141
		Drawing #	DA-900
		Issue	1



1 1PM PLAN
1 : 200



2 2PM PLAN
1 : 200

Certification of Shadow Diagrams:

Buckandsimple architects certifies that the shadow diagrams submitted with this proposal are:

- In accordance with the survey prepared by union spatial registered Surveyors as submitted with the development application
- Drawn to true north
- Indicate shadows cast by the proposed at 9am, 12pm and 3pm on June 21
- Indicate the shadows cast by existing buildings and structures on the site and in the surrounding area

Certified by:

Peter Moore
NSW Registered Architect No. 5680

3 3PM PLAN
1 : 200

SHADOW LEGEND

Overshadowing Analysis: Winter Solstice 29 Alan Ave
Private Open Space Area = NOM 253.2 m²

Time	Existing Area in shade at 29 POS	Additional Area in shade at 29 POS due to Proposal	Total Area in shade at 29 POS
9AM	162.7 m²	50.7 m²	213.4 m²
10AM	125.8 m²	21.5 m²	147.3 m²
11AM	110.7 m²	10.5 m²	121.2 m²
12PM	104.7 m²	1.2 m²	105.9 m²
1PM	93.6 m²	0 m²	93.6 m²
2PM	115.4 m²	0 m²	115.4 m²
3PM	147.2 m²	0 m²	147.2 m²

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Development Application

No.	Description	Date
1	Issue for Development Application	17.02.2021

Project	Alan Ave	Scale @ A1, A3 half indic. 1 : 200	Drawn by BS / Checked by BS
Location	27 Alan Avenue, Seaforth NSW 2092	Project Issue Date Oct 2020	Sheet Issue Date 17.02.2021
Client	O'Hanlon, Gluliano & El Khouri	Project number 1141	Drawing # DA-901 / Issue 1
Drawing	Shadow Diagrams		

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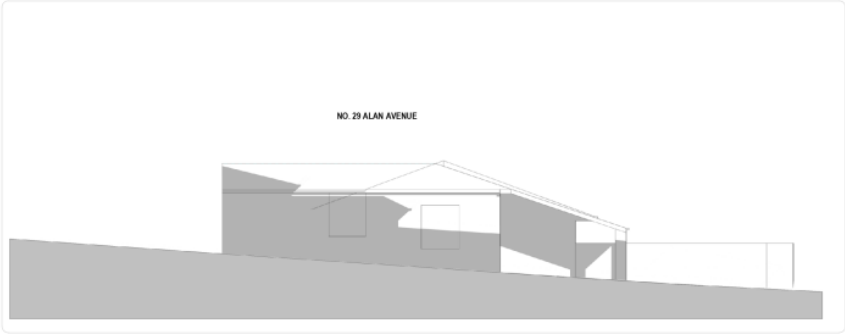
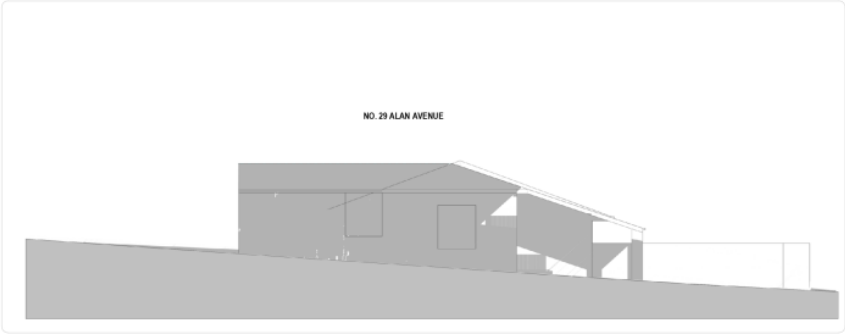
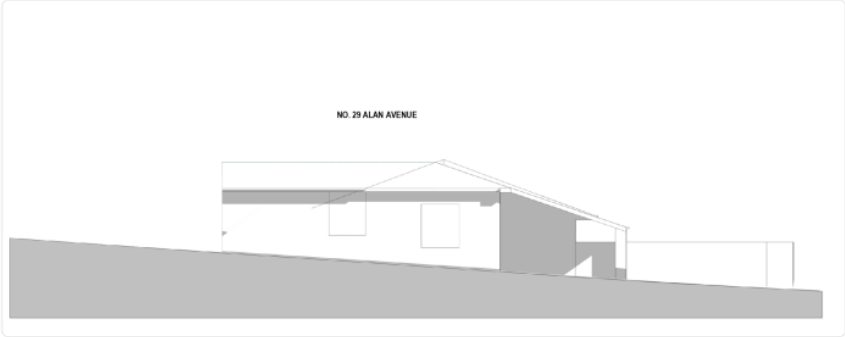


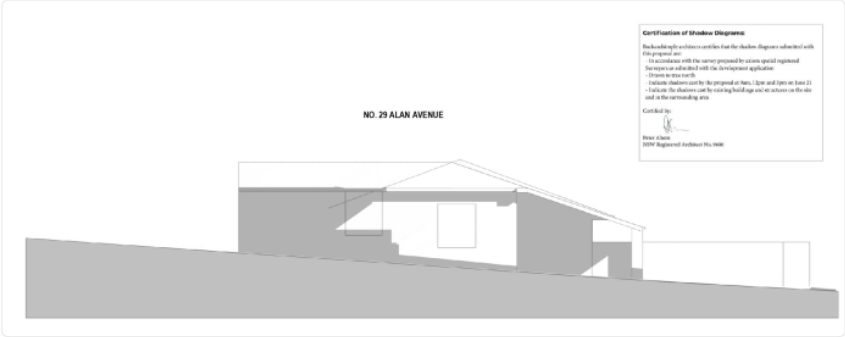
1 SHADOW ELEVATION_EXISTING_No. 29 ALAN AVE_9AM



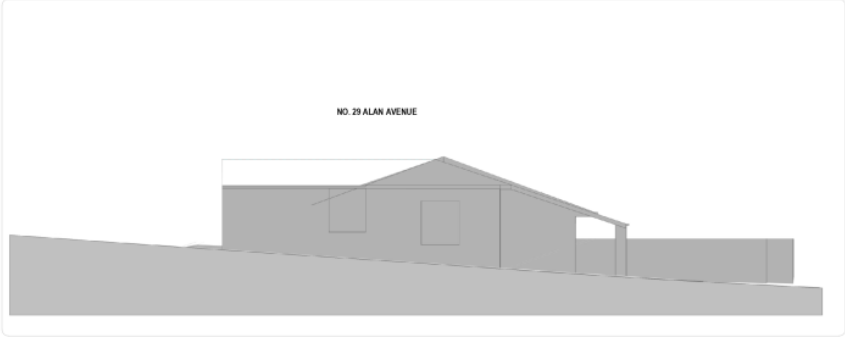
4 SHADOW ELEVATION_PROPOSED_No. 29 ALAN AVE_9AM



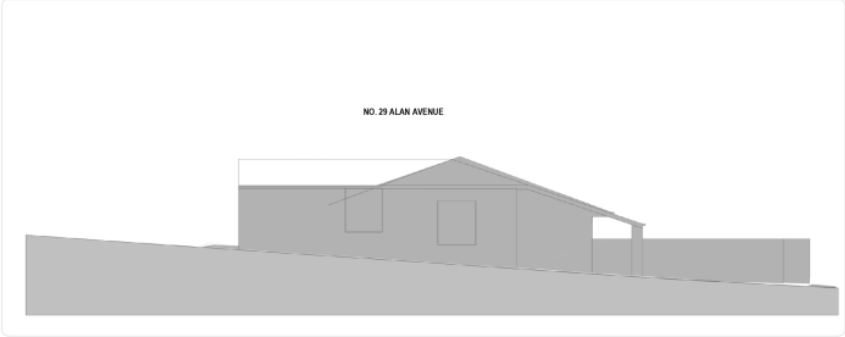
2 SHADOW ELEVATION_EXISTING_No. 29 ALAN AVE_12PM



5 SHADOW ELEVATION_PROPOSED_No. 29 ALAN AVE_12PM



3 SHADOW ELEVATION_EXISTING_No. 29 ALAN AVE_3PM



6 SHADOW ELEVATION_PROPOSED_No. 29 ALAN AVE_3PM

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Development Application

No.	Description	Date
1	Issue for Development Application	17.02.2021

Project	Alan Ave
Location	27 Alan Avenue, Seaforth NSW 2092
Client	O'Hanlon, Gluliano & El Khouri
Drawing	Shadow Diagram Elevations - No. 29 Alan Avenue

Scale @ A1, A3 half indic.	Drawn by	Checked by
1 : 25	BS	BS
Project Issue Date: Oct 2020	Sheet Issue Date: 17.02.2021	
Project number: 1141	Drawing #: DA-902	Issue: 1

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View of Proposal From Alan Avenue

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Development Application

No.	Description	Date
1	Issue for Development Application	17.02.2021

Project	Alan Ave	Scale @ A1, A3 half indic.	
Location	27 Alan Avenue, Seaforth NSW 2092	Drawn by: BS	Checked by: BS
Client	O'Hanlon, Giuliano & El Khouri	Project Issue Date: Oct 2020	Sheet Issue Date: 17.02.2021
Drawing	Perspective	Project number: 1141	Drawing #: DA-980 / Issue: 1

19/02/2021 4:10:23 PM