

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 23 JUNE 2021



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 23 June 2021

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 9 JUNE 2021

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 9 June 2021 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2021/0222 - 11 BELLARA AVENUE, NORTH NARRABEEN - CONSTRUCTION OF A SECONDARY DWELLING
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2021/431224
ATTACHMENTS	1 Assessment Report 2 Working Plans

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council, as the consent authority, **approves** Development Consent to DA2021/0222 for Construction of a Secondary Dwelling on land at Lot 36 DP 236548, 11 Bellara Avenue, North Narrabeen, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0222
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 36 DP 236548, 11 Bellara Avenue NORTH NARRABEEN NSW 2101
Proposed Development:	Construction of a Secondary Dwelling
Zoning:	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:	Ferdinand Muller
Applicant:	Granny Flat Solutions Pty Ltd
Application Lodged:	23/03/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	31/03/2021 to 14/04/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 129,300.00

Executive Summary

The site is susceptible to a high flood risk and as such, the secondary dwelling is elevated above natural ground level by up to 1.38 metres. Achieving compliance with flood controls required several iterations of revised plans which increased the floor level whilst maintaining the ridge height of the building. Consequent of the elevated nature of the structure, concerns have been raised that the building may unreasonably prejudice the privacy currently enjoyed by neighbours.

Objections were received from both adjoining houses, being nos. 9 and 13 Bellara Avenue, North Narrabeen with both raising concern about overlooking. One of those objectors is an employee of the Northern Beaches Council therefore Executive Manager, Development Assessments discretion has been used to call the application to the Development Determination Panel as the objectors concerns remain although the Planners position as outlined in this report is that reasonable levels of privacy are

maintained.

It is assessed that any degree of overlooking can be made acceptable through the provision of conditions of consent pertaining to boundary landscaping and the raising of the sill height of the one window to the flank elevation of the building, in conjunction with the east side setback to the secondary dwelling of 2.9m. Such are discussed in detail in this report and are included within the recommendation.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for the construction of a detached secondary dwelling in the rear garden of no. 11 Bellara Avenue, North Narrabeen.

That secondary dwelling measures 11.34m in width by 3.83m in depth and accommodates an open plan living space, bathroom and bedroom. The building has a floor level achieving a maximum elevation above natural ground level of 1.38m sitting atop of steel piers. The building is to be timber clad with 7 degree pitch roof sheeting.

Amended plans were received during the course of this assessment which raised the floor level of the building to meet flood plain requirements, but the overall height and footprint of the development did not change. Given the minimal nature of changes proposed in the revised plans, the application was not re-notified to neighbours.

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.

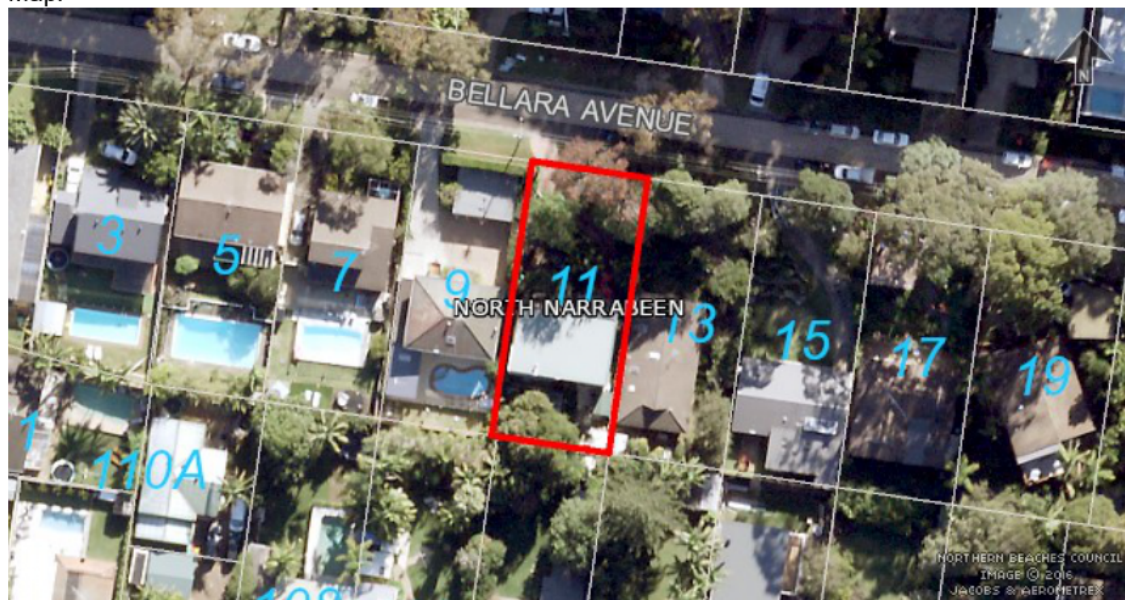
SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D11.7 Side and rear building line
Pittwater 21 Development Control Plan - D11.10 Landscaped Area - General

SITE DESCRIPTION

Property Description:	Lot 36 DP 236548 , 11 Bellara Avenue NORTH NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site is legally described as Lot 36 DP 236548 and is known as 11 Bellara Avenue, North Narrabeen.</p> <p>The site falls within the R2 Low Density Residential zone pursuant to the Pittwater Local Environmental Plan 2014.</p> <p>The site is rectangular in shape with a width of 15.24m and depth of 36.575m, equating to an overall surveyed area of 557.42m².</p> <p>The site presently accommodates a detached two storey dwelling house located towards the back of the site.</p> <p>Topographically the site slopes down from north to south (front to rear) by approximately 8m. To the rear of the site there is an easement for drainage, 3.66m wide.</p> <p>The site has vegetation throughout, none of which is thought to constitute as threatened species.</p> <p>Surrounding properties consist of other detached dwelling houses of varying age, size and construction.</p>

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan 2014 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to flood levels.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 31/03/2021 to 14/04/2021 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 2 submission/s from:

Name:	Address:
Ms Coralene Joanne Appel	13 Bellara Avenue NORTH NARRABEEN NSW 2101
Mr Jonathan Keith Hazell	9 Bellara Avenue NORTH NARRABEEN NSW 2101

Two submissions were received raising potential privacy impacts as a concern.

These matters are addressed in detail later in this report but in summary, are found to be acceptable subject to the imposition of conditions as included in the recommendations of this report.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, with conditions</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Acid Sulphate)	<p>Supported, with conditions</p> <p>The submitted Statement of Environmental Effects fails to address Class 3 and 5 Acid Sulfate Soils that are present on the site which would generally result in a recommendation of refusal. However, the extent of works is limited to the Class 3 area and the footings of the proposal are to be lesser than 1 metre in depth and are thus considered not to impact on acid sulfate soils.</p> <p>No objections are raised to the approval of the application, subject to conditions as recommended.</p>
Landscape Officer	<p>Supported, with conditions</p> <p>The proposal is indicated to comprise construction of a secondary dwelling at the rear of the property. The secondary dwelling is located on piers above existing ground levels.</p> <p>Councils Landscape Referral section has considered the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls:</p> <p>B4.22 Preservation of Trees and Bushland Vegetation C5.1 Landscaping</p> <p>The plans indicate that no significant landscape features are affected by the works.</p> <p>No objections are raised to approval subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>Supported, with conditions</p> <p>This application, for the construction of a granny flat at the rear of the property, has been assessed against relevant legislation for the protection of waterways. There is no increase to impervious surfaces therefore a water quality improvement device is not required. The applicant must install appropriate sediment and erosion controls prior to commencement.</p> <p>The proposal is therefore recommended subject to conditions.</p>
NECC (Stormwater and	<p>Supported, with conditions</p>

Internal Referral Body	Comments
Floodplain Engineering – Flood risk)	The location of the granny flat is affected by Flood Life Hazard Categories H4 and H5. The amended plans (dated 17/05/2021) show that the proposed granny flat has been modified so that the floor level is now at the Probable Maximum Flood level, to meet the requirements for sheltering in place.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objection to the development, subject to conditions as recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (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 the PLEP 2014 as a 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 <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. The site is located within the R2 Low Density Residential zone and, as such, the proposed use is permissible with consent under PLEP 2014.

Clause 21: Development to which this Division applies

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

Clause 22: Development may be carried out with consent

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

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The works would result in there being one principal and one secondary dwelling 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	The proposed secondary dwelling has a floor area of 40.734m ² and is therefore lesser than the maximum permitted under the instrument.

on the land under another environmental planning instrument, and	
(b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:	The development application is not being refused on these 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.	

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

Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any 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

The proposal complies with the relevant provisions of the SEPP ARH.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1178021S_04 dated 23 February 2021).

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

Commitment	Required Target	Proposed
Water	40	41
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.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	4.221m	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	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
7.3 Flood planning	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	(north) 6.5m	28.585m	-	Yes
Rear building line	(south) 6.5m	4.16m	36%	No
Side building line	(east) 2.5m	2.9m	-	Yes
	(west) 1m	1m	-	Yes
Building envelope	(east) 3.5m	No encroachment	-	Yes
	(west) 3.5m	No encroachment	-	Yes
Landscaped area	50% (278.1m ²)	52.4% (291.6m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.11 North Narrabeen Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D11.1 Character as viewed from a public place	Yes	Yes
D11.2 Scenic protection - General	Yes	Yes
D11.3 Building colours and materials	Yes	Yes
D11.6 Front building line	Yes	Yes
D11.7 Side and rear building line	No	Yes
D11.9 Building envelope	Yes	Yes
D11.10 Landscaped Area - General	Yes	Yes
D11.12 Fences - General	Yes	Yes
D11.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The P21 DCP states that secondary dwellings should be provided separate car parking where possible, however this conflicts with the prevailing SEPP ARH requirements which states that a consent authority cannot refuse an application if it does not provide parking. As the SEPP ARH prevails, the existing provision of parking for the principal dwelling only is satisfactory.

C1.5 Visual Privacy

The proposed development includes windows to the northern, southern and eastern elevation of the secondary dwelling. There are no windows on the western elevation.

To the north, the windows look to the existing house on site.

To the south, the windows consist of one obscured bathroom window, and one 'splashback' window in the kitchen (that is, a linear horizontal window with a height limited between the kitchen bench and the lower side of upper cabinets. That window is not considered to result in any unreasonable loss of privacy to neighbours.

To the east, the secondary dwelling is proposed to be 2.9m from the eastern boundary and there is one window from the living room which has a sill height roughly 2.3m above natural ground level. The sill is measured to be at roughly RL6.12 and ending at RL7.32m. The neighbouring house at no. 13 Bellara Avenue has several windows on their western facade looking to the site, and a gutter line of RL6.26.

The elevation of the secondary dwelling commensurate to the floor and gutter levels of the house at no. 13 largely negates opportunities for direct overlooking, but this impact could be further ameliorated by modifications to window W1 on the eastern facade. To that extent, a condition is included in the recommendations of this report to either raise the sill height of W1 to a minimum of 1243mm above finished floor level (400mm higher than existing) or, to have the lower portion of the window finished in obscure glazing up to a minimum height of 1243mm above finished floor level.

In addition to the above, a condition is imposed requiring a hedge comprising of native species capable of achieving a height of 2m at maturity to be planted along the eastern boundary for a minimum width of 5.6m (that being the width of the secondary dwelling and the gap between it and the principal dwelling).

Subject to the imposition of these conditions as recommended, it is concluded that the proposal will have no unreasonable impacts on the provision of privacy currently enjoyed by neighbours.

D11.7 Side and rear building line

Description of Non-Compliance

Part D11.7 of the Pittwater 21 Development Control Plan 2014 prescribes a rear building setback of 6m.

The proposed secondary dwelling is built within the rear setback area and achieves a setback from the boundary of 4.16m, thus resulting in a variation to the control outcome of 36%.

With regards to the request for a variation to the control requirements, an assessment against the underlying Outcomes of the control follows:

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

Comment: The desired future character of the North Narrabeen Locality seeks inter alia to provide additional and alternate forms of housing for the community but without being to the detriment of neighbours or the environment. The proposal provides additional housing, and the impacts of that new housing is described below.

- *The bulk and scale of the built form is minimised.*
Comment: The proportions of the secondary dwelling are not considered to be excessive commensurate to the development potential afforded to the land by way of the prevailing planning controls. Whilst the rear facade of the secondary dwelling is rather planar with minimal articulation, it is non-offensive in its presentation and is not considered to stand out as a dominant structure. Enforcing strict compliance with the rear setback control could potentially result in a minor decrease in scale when viewed from the property to the rear, however the difference between the proposed and a compliant structure is not significant enough to warrant modification. On that basis, the proposal is of a satisfactory bulk and scale.
- *Equitable preservation of views and vistas to and/or from public/private places.*
Comment: The proposal is not considered to unreasonably detract nor obstruct any existing views of vistas presently enjoyed from neighbouring properties or from the public domain.
- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*
Comment: As above, there are no 'valuable' views in the immediate vicinity which would warrant the relocation of the building.
- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*
Comment: Subject to the imposition of conditions pertaining to the raising of windows of the flank elevation of the secondary dwelling, combined with boundary landscaping, it is considered that the proposal will result in no unacceptable loss of privacy to neighbouring properties. The structure is not deemed to cause any excessive or unreasonable degree of overshadowing.
- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*
Comment: The development necessitates the removal of a significant portion of paving and other forms of hardstand around the site which is turn increase the calculable landscape open space area on the site. This increased area creates new opportunities for substantial landscaping and tree canopy and enhances the wider area.
- *Flexibility in the siting of buildings and access.*
Comment: If the premise of a secondary dwelling on the land is to be accepted then the location proposed is considered to be the most suitable and practical on the site. Consideration was given to positioning the structure forward of the principal dwelling, however given the topography of the land such location would require substantial excavation works, or an elevation of the structure greater than what is currently proposed. Thereby, flexibility in the siting of the building is considered warranted in this instance.
- *Vegetation is retained and enhanced to visually reduce the built form.*
Comment: The development does not require the removal of any vegetation on the site. As described above, the proposal includes the removal of a large area of hard surface which enhances the site. Conditions are imposed requiring boundary planting to the eastern edge of the structure which shall, over time, reduce the built form of the proposed secondary dwelling.
- *To ensure a landscaped buffer between commercial and residential zones is established.*
Comment: N/A no adjacent commercial zone.

On balance the proposal is considered to succeed when assessed against the underlying Outcomes of the control notwithstanding the numerical variation, and thus the variation is supported.

D11.10 Landscaped Area - General

The submitted 'Soft Area Plan DA08 Rev. H' dated 22 April 2021 details that a large portion of the existing paving to the front of the site is to be removed and reinstated as soft landscaping. Subject to the complete removal of this paving and any slab beneath, and the reinstatement of soft landscaping (that is, landscaping atop of deep soil), the development complies with the prescribed landscaped area ratio of 50%.

A condition is included in this recommendations of this report requiring that all nominated hard surfaces be removed in their entirety and reinstated as soft landscaping prior to the issue of any Occupation Certificate for the secondary dwelling.

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 \$ 647 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 129,300.

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

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 DA2021/0222 for Construction of a Secondary Dwelling on land at Lot 36 DP 236548, 11 Bellara Avenue, NORTH NARRABEEN, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 - Site Plan	17 May 2021	Granny Flat Solutions
DA03 - Floor Plan	17 May 2021	Granny Flat Solutions
DA04 - Elevations & Section	17 May 2021	Granny Flat Solutions
DA08 - Soft Area Plan	20 April 2021	Granny Flat Solutions
Colour & Material Schedule	Undated	Granny Flat Solutions

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Flood Impact Assessment Report	20 April 2021	SDS Engineering
BASIX Certificate No. 1170821S_04	23 February 2021	AWG Design

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

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

Waste Management Plan		
Report Title	Dated	Prepared By
Waste Management Plan	Undated	Granny Flat Solutions

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Undated

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

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

3. Prescribed Conditions

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

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

that Act, the number of the owner-builder permit.

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not

commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$646.50 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 \$129,300.00.

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

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Flooding**

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

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 4.55m AHD of shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Probable Maximum Flood of 5.10m AHD taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 4.55m AHD. This includes the air conditioning unit.

Floor Levels – C3

The underfloor area of the dwelling below the 1% AEP flood level of 4.05m AHD is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor

area must be of an open design from the natural ground level up to the 1% AEP flood level.

Flood Emergency Response – E1

New floor levels within the development shall be set at or above the Probable Maximum Flood level of 5.10m AHD, as shown in the amended drawings dated 17/05/2021.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 4.55m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

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

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:

- Window W1 is to have a minimum sill height of 1243mm above finished floor level, or is to have obscure glazing for the lower portion of the window up to a minimum height of 1243mm above 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. **Compliance with Standards**

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

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

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

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with

- minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

13. **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 SDS Engineering 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.

14. **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.

15. **Acid Sulfate Soil**

Any excavation more than 1m deep shall require an Acid Sulfate Soil assessment before work proceeds.

Reason: To ensure acid sulfate soil is correctly assessed to minimise environmental impacts.

16. **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**

17. **Certification of the Structural Stability of the Building (B2)**

A suitably qualified structural engineer is to certify the structural stability of the new development considering lateral flood flow, buoyancy, suction effects, wave action and debris load impact of the Probable Maximum Flood (PMF) design flood depths and velocities.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

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

18. **Certification of Services (B3)**

A suitably qualified electrical engineer or contractor is to certify that all new electrical equipment (including the air conditioning unit), power points, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the Flood Planning Level of 4.55m AHD.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

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

19. **Stormwater Drainage Disposal Certification**

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

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

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

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

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

Reason: To ensure satisfactory management of stormwater.

20. **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.

21. **Screen Planting**

Screen planting comprising of native species capable of attaining a height of 2 metres at maturity is to be planted along the eastern boundary adjacent to the secondary dwelling and the gap between it and the principal dwelling.

Plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

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.

22. **Removal of Hardstand**

All areas of 'Proposed Grass' as detailed on approved drawing DA 08 rev. H shall be free of any

paving, concrete slab or the like, and is to comprise of soil to a minimum depth of 20cm with newly laid turf.

Prior to the issue of any Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the hard-surface removal and landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

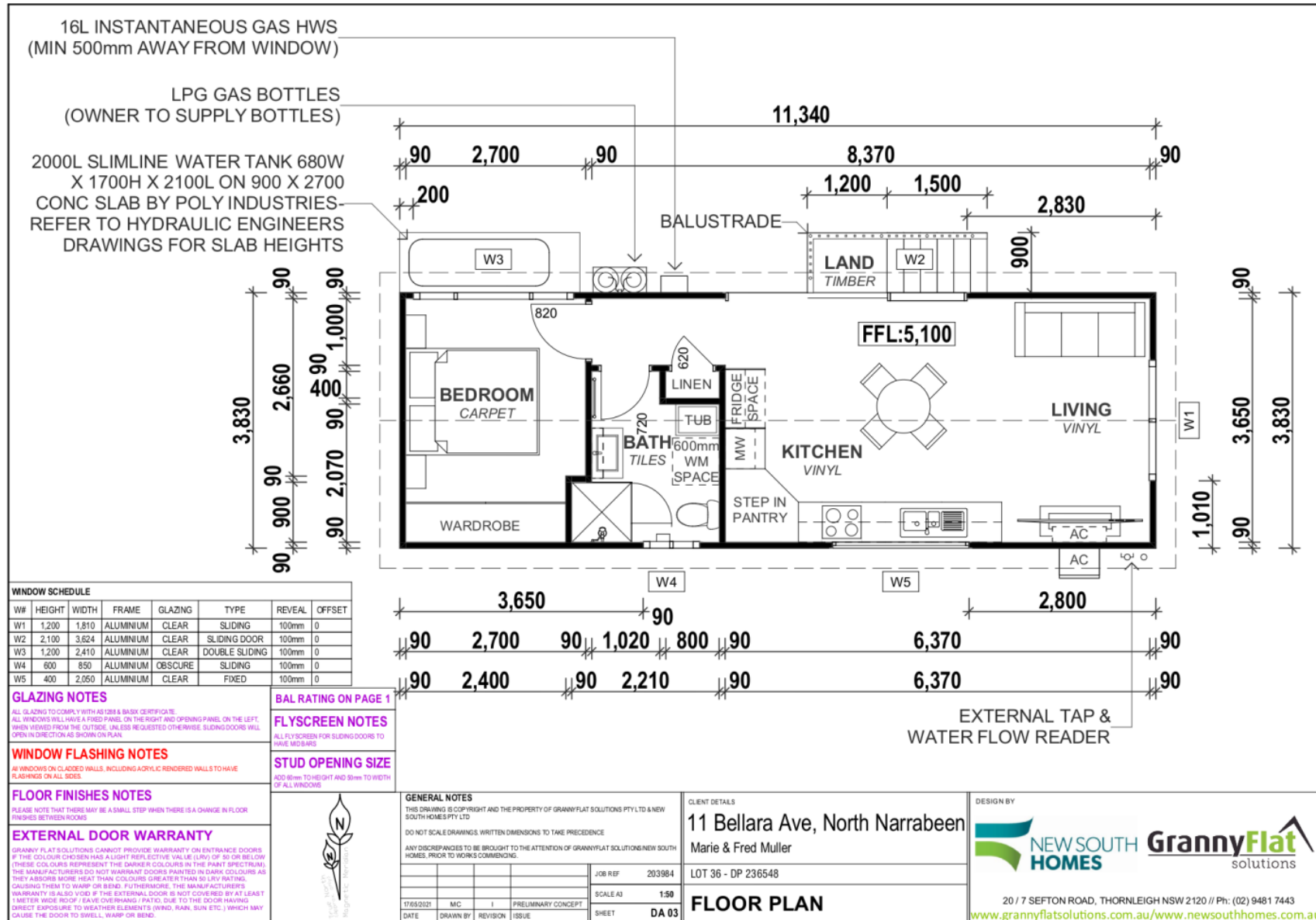
23. **Removal of All Temporary Structures, Material and Construction Rubbish**

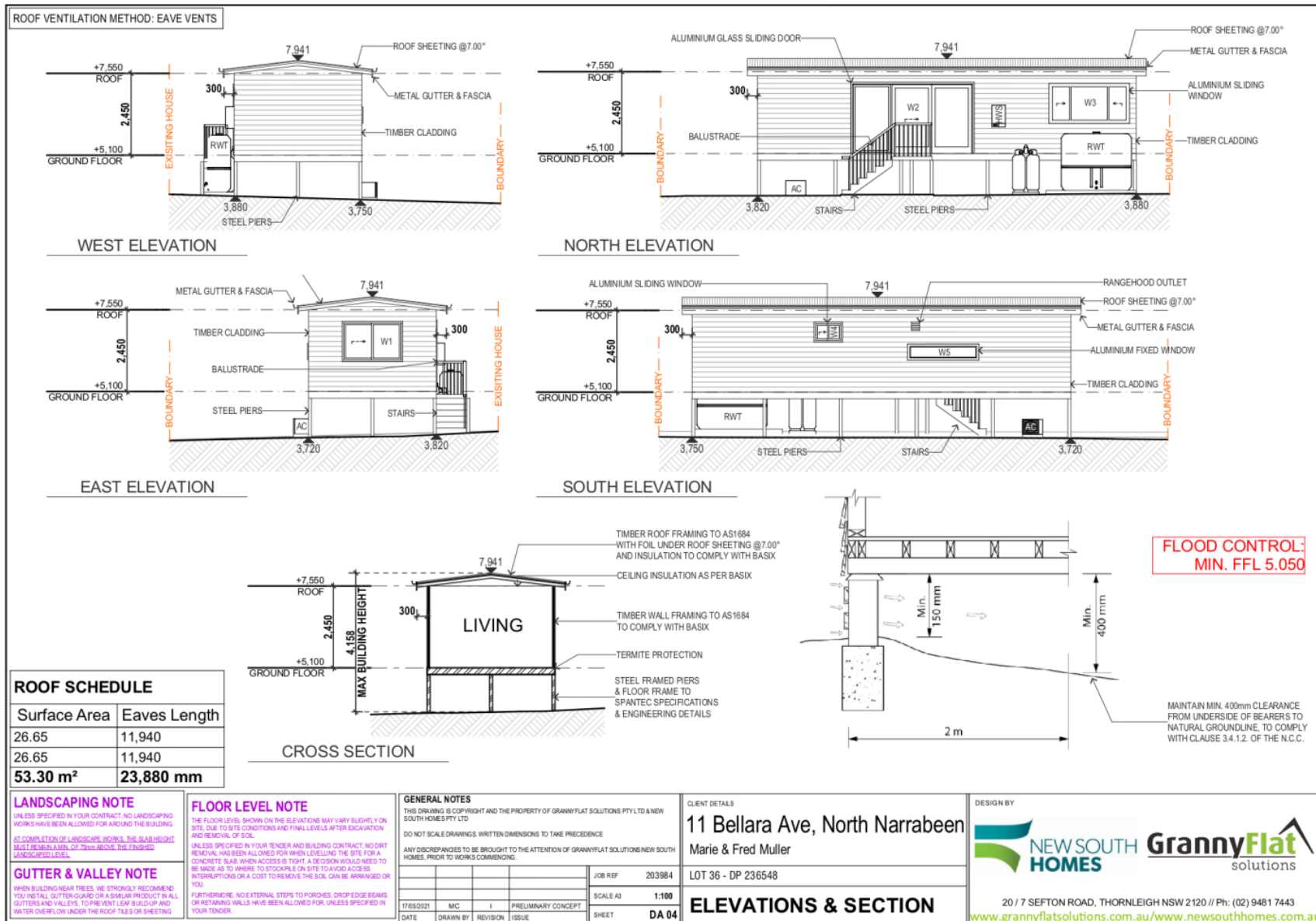
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

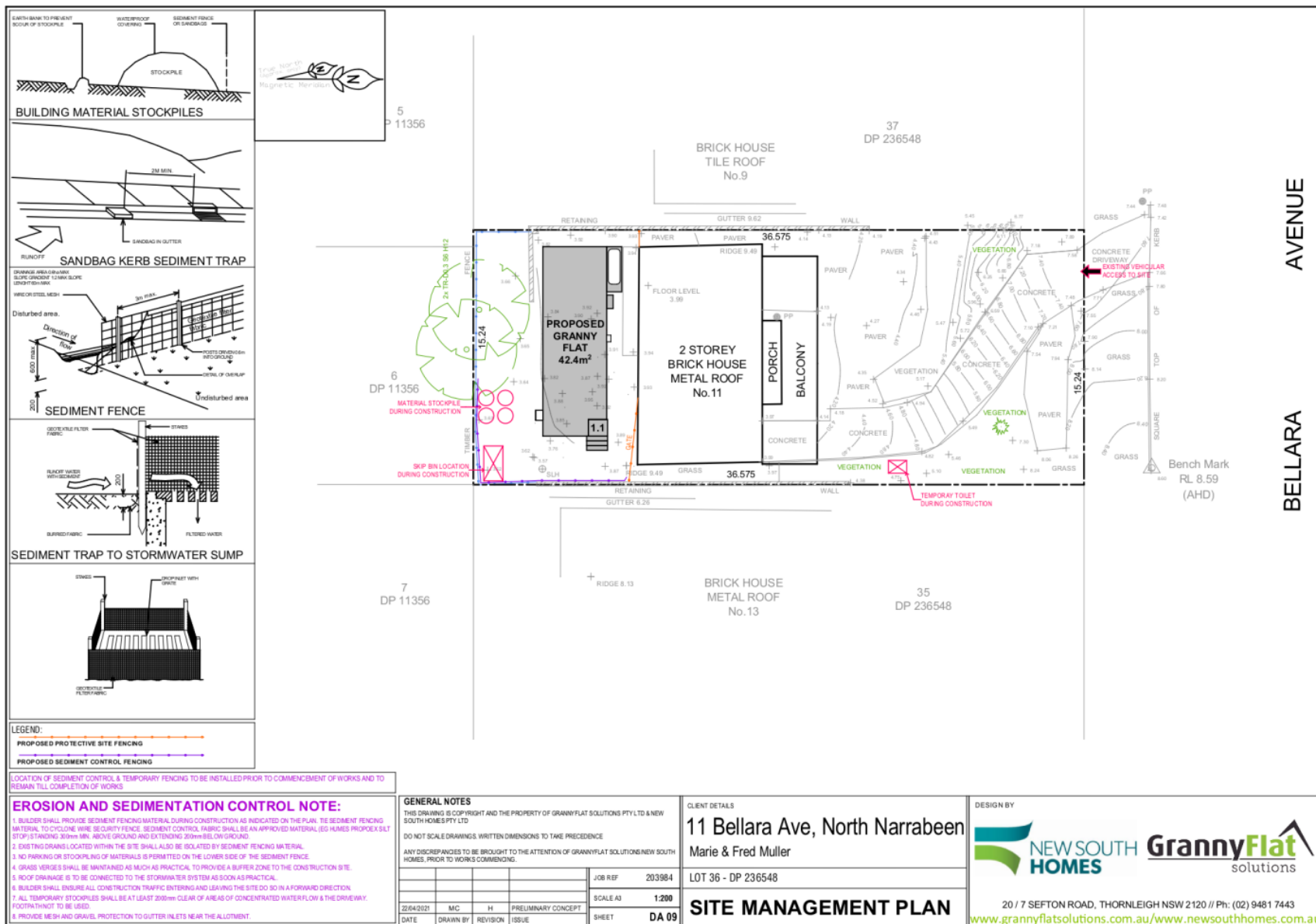
Reason: To ensure bushland management.











ITEM 3.2

**MOD2021/0160 - 3 BERITH ST, WHEELER HTS -
MODIFICATION OF DEVELOPMENT CONSENT DA2019/1173
GRANTED FOR DEMOLITION, CONSTRUCTION OF SENIORS
HOUSING DEVELOPMENT COMPRISING 6 X INFILL SELF-
CARE UNITS, BASEMENT PARKING, STRATA SUBDIVISION.**

REPORTING MANAGER Lashta Haidari
TRIM FILE REF 2021/434914
ATTACHMENTS
1 Assessment Report
2 Working Plans

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** Mod2021/0160 for Modification of Development Consent DA2019/1173 granted for demolition of existing development and construction of a Seniors Housing development comprising 6 x infill self-care housing units and basement parking, and strata subdivision on land at Lot A DP 411784, 3 Berith Street, Wheeler Heights, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0160
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Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot A DP 411784, 3 Berith Street WHEELER HEIGHTS NSW 2097
Proposed Development:	Modification of Development Consent DA2019/1173 granted for demolition of existing development and construction of a Seniors Housing development comprising 6 x infill self care housing units and basement parking, and strata subdivision
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:	Ming Hong Zhou
Applicant:	Ming Hong Zhou

Application Lodged:	13/04/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	21/04/2021 to 05/05/2021
Advertised:	21/04/2021
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks consent for minor modifications to the design approved under DA2019/1173 for a Seniors Housing Development comprising six (6) self care housing units and basement car parking. The modifications are generally a result of design changes required to satisfy condition 11 of the consent (DA2019/1173).

The application is required to be determined by the DDP as six (6) submissions have been received which raised concerns about cumulative impact, overdevelopment, density, height, bulk and scale, streetscape, residential amenity, parking and road safety, excavation and construction, tree removal,

insufficient information. The modification does not seek to increase the density, bulk, scale or massing and issues regarding overdevelopment and cumulative impacts are not specifically relevant to the subject modification and were considered under the original DA.

Council's Transport and Waste Unit have confirmed that the proposal addresses the requirements of condition 11 and have no objections to the application. Council's Landscape Officer has no objection to the removal of the liquid amber street tree, an exempt species, which presents a safety issues for pedestrians. A condition requires replanting of two (2) native trees in the road reserve. As a consequence of the provision of two (2) visitor parking spaces there is a minor extension of the basement towards the frontage. An updated geotechnical report has been submitted in support of this change. The extension of the basement will require the removal of tree No. 4. Council's Landscape Officer has no objections to the removal of the tree subject to a replacement species and on balance the benefit of providing the extra visitor parking spaces to address community concern has been assessed as positive outcome.

In summary, the assessment of the modification against the applicable planning controls and related legislation reveals that there are no significant breaches of the controls and the application is therefore recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for minor modification to the design approved under DA2019/1173 for a Seniors Housing Development comprising six (6) self care housing units and basement car parking. The modifications are generally a result of design changes required to satisfy condition 11 of the consent (DA2019/1173). In detail the application requires:

A02_Basement:

- The single sided aisle in the basement car parking increased to be minimum 6.1m wide in accordance with Condition 22;
- The basement (extended 3.3m to the west) to accommodate a total of ten (10) car parking spaces, eight (8) residential car parking spaces, two (2) visitor spaces, one (1) residential car park space to be increased to 3.8m in width and all car parking spaces to comply with the requirements for parking with a disability as set out in AS 2890 and in accordance with Condition 11(c)(v);
- The provision of AC units for all 6 apartments;
- High level louvred windows added to the basement for mechanical ventilation, and
- Details of the fan, exhaust riser and ducting for basement car-park ventilation provided.

A03_Site and Ground Floor Plan:

- Waste Room setback 1.0m from the southern side boundary and the bulky store deleted in accordance with Condition 11(b)(i);
- Fixed privacy screens - angled to prevent direct overlooking to neighbours proposed to living room windows of Units 5 and 6 in accordance with Condition 11(c)(iv);
- Kitchen windows Units 5 and 6 reduced from 1500mm in height to 600mm and the awning above the window deleted.
- Retaining walls along south and north boundary positioned where required maintaining 1 metre setback to boundary, southern retaining wall Unit 6 moved in to be 1 metre from boundary in accordance with Condition 11(a)(i))

- Face block (south and north walls of living rooms Units 1 and 2) replaced with face brick to match balance of building.
- Details of the fire (Hydrant + dual check valve) and hydraulic (gas & water meters) services provided;
- Concrete columns added to support the first-floor terraces to achieve structural requirements;
- Sky light added to bathrooms to Units 5 and 6;
- The north-west corner of living room Unit 6 realigned to simplify construction;
- Area calculation for Unit 6 corrected from 83.6sqm to 81.2sqm;
- Details of hot water units, down pipes, louvres covering bathroom/ kitchen exhausts on facades, carpark exhaust, electrical/ NBN cupboards and other services provided;
- Construction for single storey Units 5 and 6 is brick veneer changed from proposed cavity brick. BASIX updated.
- Roof added to bedrooms 2 and 3 – Units 1 and 2, this was created when first floor bed 2 and 3 were setback an additional 500mm required under Condition 11(c)(i)).
- RWT Unit 5 moved further west along building façade.
- Minor changes to the Unit 1 and Unit 2 bedroom 1 windows to create a highlight windows;
- Minor changes to materials and finishes on the southern and northern facades, and
- New pedestrian egress provided along southern side for occupants of Units 5 and 6 noting that 2 alternative exits required (BCA C3.11g).

A04_First Floor Plan:

- The outer wall recessed (Bed 2 and 3) Units 3 and 4 for an additional 500mm from the side boundaries in accordance with Condition 11(b)(i);
- Modification to “Slatted Timber Screen” proposed for First Floor windows have to be substituted with alternative non-combustible material (Certifier required) and to be fixed privacy screens angled to prevent direct overlooking to neighbours. These screens installed on the following windows / balconies: Unit 3 and 4 bedrooms 1, 2 and 3 and the northern and southern edge of the balconies to Units 3 and 4 in accordance with Condition 11(c)(iv);
- The front balconies for the upper level to Units 3 and 4 modified to include 50% open style or glazed or lightweight (infill) balustrade sections facing the street in accordance with Condition 11(b)(ii);
- The kitchen window to Unit 3 on the southern elevation modified to a high level window in accordance with Condition 11(c)(iv);
- Hot water units, down pipes, louvres covering bathroom/ kitchen exhausts on facades, carpark exhaust, electrical/ NBN cupboards and other services located;
- Sky light added to the Unit 3 corridor and to Unit 4 and slight changes in the location of the approved skylights to Units 5 and 6 and
- Construction for first floor units 3 and changed to brick veneer, previously double brick. BASIX updated.

A05_Roof Plan:

- Roof slope to front building revised – single slope towards the central corridor replaced with 2 degree slopes towards North and South.

External / Other

- Removal of Tree 1, being a liquid amber tree located within the road reserve.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D14 Site Facilities
Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation

SITE DESCRIPTION

Property Description:	Lot A DP 411784 , 3 Berith Street WHEELER HEIGHTS NSW 2097
Detailed Site Description:	The subject site is legally described as Lot A in DP 203378 and Lot 4 in DP411784 no 3 Berith Street, Wheeler Heights. The site is located on the eastern side of Berith Street, approximately 55m south of the intersection with Rose Avenue. The site has a total area of 1,269sqm, it is rectangular in shape with a 20.13 metres (m) frontage to Berith Street and a depth of 63.0m. The site slopes gently toward the north-east corner having a (diagonal) cross fall of 4m and average gradient of 5% from front to rear.

The site currently contains a part one / part two storey detached dwelling house with integrated garage, pool and minor structures, including a shed located adjacent to the rear boundary. Medium to large trees are located on the property. Vehicle and pedestrian access to the site is available via Berith Street. The site is located within the R2 Low Density Residential zone.

Surrounding development primarily comprises low density detached one and part one and two storey dwellings in landscaped settings. The dwelling to the immediate north is single storey detached with a hipped roof and the dwelling to the immediate south is a part one / part two storey dwelling with a pitched roof and a detached garage to the front. The tennis court to Wheeler Heights Primary School adjoins the site to the east (rear) and Augusta Shopping centre on Veterans Parade is located approximately 400m due east (via Berith Street and Rose Avenue).

The site is not subject to natural hazards of landslip, flooding, bushfire or acid sulfate soils and does not contain any significant natural rock outcrops.

Map:



SITE HISTORY

A search of Council's records has revealed the following:

DA2019/1173

On 4 March 2020, Deferred Commencement approval was granted for DA2019/1173 for:

The demolition of existing development and construction of a Seniors Housing development comprising

6 x infill self care housing units and basement parking, and strata subdivision. The Deferred commencement condition required the surrender of the DA2018/1828.

On 30 April 2020, the Deferred Commencement conditions, were satisfied, DA2018/1828 was surrendered, and DA2019/1173 became operational.

Condition 11 of DA2019 (Amendments to the Approved Plans) required the following amendments to the approved plans:

a) Excavation

i) No excavation for retaining walls / terraces within 1.0m of the north and south side boundaries, or within 3.0m of the east (rear) boundary.

b) Ancillary Structures

i) The waste room shall be redesigned to comply with Councils Waste Management Plan, noting that bulky goods storage is not required, and be setback 1.0m from the southern side boundary.
ii) Plans detailing the footpath installation along Berith Street are to be amended to reflect the recommendations of the Arboricultural Impact Assessment Report dated 12 June 2019 prepared by Jackson Nature Works with regards to tree protection, offsets from trees and pavement materials to be used. Amended landscape plans are required to show the revision to the accessible footpath.

c) Seniors Living Buildings

i) The outer wall & roof recess for bedrooms 'B2' and 'B3' for Units 3 and 4 (upper storey) shall be set back an additional 500mm from the side boundaries.
ii) The front balconies for the upper level to Units 3 and 4 are to include 50% open style or glazed or lightweight (infill) balustrade sections facing the street to reduce visual impact on the streetscape.
iii) Secondary colours and material change is to be made to the upper wall side walls for Units 5 and Unit 6 to improve visual interest and design, consistent with the external colours and materials used for Unit 1 to Unit 4.
iv) Privacy treatment to windows and balconies. The kitchen window to Unit 3 on the southern elevation shall be modified to a high level window. Fixed privacy screens angled to prevent direct overlooking to neighbours shall be installed on the following windows / balconies: Unit 3 and 4 bedrooms 1, 2 and 3 and Units 5 and 6 the kitchen and living room windows. The northern and southern edge of the balconies to Units 3 and 4.
v) The basement car park design shall be amended to requiring a total of ten (10) car parking spaces, eight (8) residential car parking spaces, two (2) visitor spaces, one (1) residential car park space to be increased to 3.8m in width and all car parking spaces to comply with the requirements for parking with a disability as set out in AS 2890.

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

The plans submitted with the subject modification generally demonstrate compliance with the conditions. As a consequence of compliance with the condition some additional minor modification are required. The proposal also refers to the removal of the liquid amber street tree, an exempt species

DA2018/1828

On 9 September 2019, consent was granted for DA2019/1173 by the Northern Beaches Local Planning Panel for the construction of a Seniors Housing development comprising six (6) x infill self care housing units and basement parking.

Issues identified post determination of development application (DA2018/1828) related to the geotechnical

report resulted in the applicant submitting a fresh development application (DA2019/1173) with a new geotechnical report. It is noted that the proposal remains to be the same as that sought in the original development application DA2018/1828.

PLM2018/0095

Pre-lodgement Meeting PLM2018/0095 for "Demolition works and the construction of a Seniors Living Development State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004" was held with Council on 29 May 2018. The pre-lodgement meeting was held in respect of the original development application DA2018/1828. No pre-lodgement meeting was held in respect of the subject application DA2019/1173.

DA2012/0670

On 28 August 2012, consent was granted for alterations and additions to an existing dwelling and subdivision of one lot into two lots.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/1173 in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The height, setback and general form of the development is maintained with the proposed modifications not compromising the streetscape,</p>

Section 4.55(1A) - Other Modifications	Comments
	<p>landscape or residential amenity outcomes afforded through approval of the original application.</p> <p>The proposal includes minor changes to the design as a result of modifications required to address the conditions of the original consent. The minor changes include:</p> <p>A 3.3m increase in the excavation to provide the required car parking spaces, the addition of high level louvered windows to the basement, concrete columns added to support the first floor terraces, minor internal alterations to the living room within unit 6, roof added to bedroom 2 and 3 as a result of the increased set back of units 1 and 2, minor internal changes,</p> <p>The proposed changes are considered to result in minimal environmental impacts and will not result in unreasonable impacts on neighbouring properties or the external design of the approved development.</p> <p>The previously approved building height, setbacks and envelope are not materially altered with a majority of the proposed modifications undertaken to comply with the conditions of development consent.</p>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/1173 for the following reasons:</p> <p>The modifications primarily address condition 11 of the consent which required design modification. As a consequence of compliance with the condition some additional minor design changes have been proposed as detailed above.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.</p>
(d) it has considered any submissions	See discussion on "Notification & Submissions"

Section 4.55(1A) - Other Modifications	Comments
made 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 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

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

Section 4.15 'Matters for Consideration'	Comments
	<p>consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/04/2021 to 05/05/2021 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:
Mrs Dorothy Susan Waterhouse	56 Rose Avenue WHEELER HEIGHTS NSW 2097
Ms Joan Elizabeth Catherine Croydon	5 Berith Street WHEELER HEIGHTS NSW 2097
Amanda Louise Spencer	1 Berith Street WHEELER HEIGHTS NSW 2097
Mr Robert Guy Barnes Mrs Christine Helen Barnes	10 Berith Street WHEELER HEIGHTS NSW 2097
Ms Rebecca Catherine Plester	8 Berith Street WHEELER HEIGHTS NSW 2097
Ms Jan Margaret Hawthorn	20 Berith Street WHEELER HEIGHTS NSW 2097

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

- Cumulative Impact / Overdevelopment
- Contrary to Draft Local Housing Strategy
- The topography is not suitable for Seniors
- Traffic, parking and road safety
- Insufficient restriction on occupation
- Construction impacts
- Impact on solar access
- Impact on privacy
- Impact on views
- Excessive bulk and height
- Impacts on the streetscape
- Contrary to the low density zone
- Excessive excavation
- Issues with vermin prior to the demolition
- Boundary fence
- Trees
- Insufficient waste management
- Insufficient information

The matters raised within the submissions are addressed as follows:

- **Cumulative Impact / Overdevelopment of Seniors Housing in Wheeler Heights**

Comment:

The application is for a modification to an approved Seniors Housing development. The modification does not seek to increase the density, bulk, scale or massing and issues regarding

overdevelopment and cumulative impacts are not specifically relevant to the subject modification and were considered under the original DA.

- **The proposal is contrary to the Draft Local Housing Strategy. The application should be refused and a moratorium on non R2 DA's including Seniors Housing should be imposed.**

Comment:

As noted above, the Seniors Housing development has already been approved and the subject application seeks minor changes to the design primarily to address conditions of the original consent. The Draft Local Housing Strategy is on public exhibition, it has not been adopted and provides no power to require a moratorium on Senior Housing developments in R2 zone.

- **The topography is not suitable for Seniors.**

Comment:

The topography of the site is not a matter for consideration under the subject modification for minor design changes.

- **Additional traffic in the area and impacts on availability of on street car parking and road safety including the safety of school children attending local schools.**

Comment:

The proposal has been amended to include two (2) visitor parking spaces, as required under condition 11. The condition was imposed to address concerns from neighbouring regarding the impact of the development on the availability of kerb side parking.

Both the original application and subject modification have been reviewed by Council's Transport Unit who offer no objections to the proposal in respect to road safety. Conditions included in the original consent to address such concerns include the requirement for a Traffic Management Plan. These conditions are still relevant in the modified application.

- **The "Seniors" development can be occupied by people over 50 and their families.**

Comment:

A condition in the original consent limits the occupancy of the development in accordance with the SEPP (HSPD). It is agreed that this allows for family members of individual over 50 years of age to occupy the development.

- **Construction impacts.**

Comment:

This is not a material consideration to the subject modification as the application does not seek to alter the conditions imposed in the original consent to manage the construction.

- **Impact on neighbouring amenity in terms of solar access to northern windows and private open space, privacy and views.**

Comment:

The subject modification primarily address condition 11 of the original consent which was imposed, in part, to help reduce impacts on neighbouring amenity. Privacy devices, including screens and high level windows, are included in the proposed plans and the first floor of the front building has been set back in reduce the bulk of the front building as viewed from either

side of the site.

There is no increase in overshadowing and it is noted that the approved scheme was compliant with clause D6 of the WDCP. There will be no additional impacts on outlook, noting that view loss was previously assessed as minor in the original DA.

- **Excessive bulk and height which will impact on the streetscape and contrary to the low density zone.**

Comment:

The bulk, scale and massing of the development is generally consistent with the approved development and compliant with the SEPP (HSDP) which allows for a greater density in the R2 Low Density zone which would otherwise not be permitted in the WLEP.

- **Excessive excavation and potential structural impacts on neighbouring properties.**

Comment:

The proposal seeks consent for a minor increase in the basement to allow for the parking required under condition 11 of the original consent. The additional excavation extends 3.3m towards the frontage, there is no increase in the depth of excavation or in the extent of excavation to the side boundaries. On balance, the addition of two (2) visitor parking spaces is considered to be a benefit over the minor increase in the excavation. The conditions relating to excavation imposed in the original consent remain valid and the recommendation of the updated geotechnical report have been included in the modified consent which will ensure that there is no unreasonable impacts on the structural stability of neighbouring properties.

- **Issues with vermin underneath existing house need to be addressed prior to the demolition of the house.**

Comment:

Details on the management of the demolition will be considered under the construction certificate.

- **The existing boundary fence to No. 1 Berith Street requires supporting metal post and rails on the side of No. 1 Berith Street.**

Comment:

As this relates to land outside the subject application it is not reasonable to require this work as a condition of consent.

- **The boundary fence between No. 3 and 5 Berith Street requires clarification. The height of the boundary fence should be maintained to be consistent with the existing fence.**

Comment:

The plans submitted with the modification application does not show any changes to the boundary fence. Accordingly, it is recommended that a condition be imposed that requires the proposed 1.8m high timber boundary fence between No. 3 and 5 Berth Street to follow the slope of the land to maintain the height of the existing boundary fence.

- **The gumtree on the reserve outside No. 1 Berith Street poses a risk to the safety of the elderly.**

Comment:

The gum tree is a street tree and is not directly related to the subject site given its location outside the adjoining property.

- **Insufficient waste management 12 bins are required 8 are provided.**

Comment:

The application has been amended to satisfactorily address the concerns from Council's Waste Officer, refer above.

- **Loss of trees including the removal of the liquid amber street tree helps screen the development the removal of the tree will expose the development and impact on wildlife habitat.**

Comment:

The removal of the liquid amber street tree is supported by Council's Landscape Officer. While the removal of the tree will temporarily expose the development from the street a condition requires two (2) native trees to be planting in the reserve which in the long terms will help soften the visual bulk of the development and be a more appropriate species which will help minimise safety issues to pedestrians. The site is not identified as a protected wildlife corridor.

- **No artist impressive provided showing the changes to the cladding, roof design and frontage. The application should be rejected as it is does not contain all the required information.**

Comment:

An artist impression of the external changes to the materials and frontage is not required and sufficient information has been submitted to assess the application without the need to reject it.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The modification includes application to remove one street tree (<i>Liquidambar styraciflua</i>) located forward of the property. The tree is located adjacent to the pedestrian entry to the development and the required new public footpath. Concern has been raised regarding the safety of residents and the public caused by the seed pods of the tree. As pedestrian traffic is likely to increase as a result of the public and private works, the concern raised is considered legitimate. Additionally, the new footpath works are likely to impact on tree roots, Liquidambar being noted for extensive shallow roots. Liquidambar is also an exempt tree species as listed under WDCP E1 Preservation of</p>

Internal Referral Body	Comments
	<p>Trees or Bushland Vegetation.</p> <p>In consideration of the above, removal of the tree is not objected to, subject to replanting of 2 native trees in the road verge forward of the property, as conditioned below.</p> <p>The requirement of condition of consent to provide additional basement carparking results in the basement wall being extended further toward the street. The result is that the works will impacts on a tree previously conditioned for retention (Tree 4). The tree is only in fair condition and it is recommended that approval to remove the tree be included in conditions, subject to replacement as conditioned below.</p> <p>No objections are raised to the modification, subject to amended conditions as indicated below.</p>
NECC (Development Engineering)	No objections to the modification as the stormwater drainage /detention storage is unchanged . No additional/amended conditions required.
Traffic Engineer	<p>The proposal comprises the following transport-related modifications:</p> <ul style="list-style-type: none"> - In accordance with Condition 22 the proposed single-sided aisle within the basement car parking area increased to be minimum 6.1m wide. - In accordance with Condition 11(c)(v) the modification of the basement geometry to accommodate a total of ten (10) car parking spaces, eight (8) residential car parking spaces, two (2) visitor spaces, one (1) residential car park space to be increased to 3.8m in width and all car parking spaces to comply with the requirements for parking with a disability as set out in AS 2890. <p>The proposed modification has satisfactorily addressed the requirements of conditions 11(c) (v) and the second part of condition 22 noting that the first part of the condition regarding the construction of the footpath is yet to be satisfied.</p> <p>Given the above, the proposed modification is supported on traffic grounds.</p>
Waste Officer	<p>Updated comments June 2021</p> <p>Proposal is approved with conditions</p> <p>Previous comments Recommendation – Refusal</p> <p>This proposal does not comply with Council's waste management design guidelines. To comply with Council's design guidelines the following requirements must be met.</p> <p>Specifically:</p> <p><u>Bin Storage and Bin allocation</u></p> <p>The current waste storage room configuration requires some bins to</p>

Internal Referral Body	Comments
	<p>be double stacked in the room. Stacked bins are inaccessible to residents wanting to dispose of waste. It is unacceptable for the waste collection staff to have to shuffle bins around to access the bins needed for collection.</p> <p>As the waste storage room is large enough to accommodate the required 8 x 240 litre waste bins, this will be resolved if the waste storage room door is centered rather than in its current location to one side. This would allow for unimpeded access to each bin for the residents and collection staff, as a row of 4 bins on either side of the doorway and an isle directly in front of the doorway and between each row of bins could be accommodated.</p> <p><u>Bin Room Facilities</u> A tap for washing out the waste storage room is to be provided. The tap must not obstruct aisles, access ways and placement of bins. Wash water to be drained to the garden or sewer. The Waste storage area must not be used to store any other items including bulky goods and can't be used for any other infrastructure including gas meters, water meters, air con plant, etc.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations have already been included as a condition of consent in the original DA and they remain valid.

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 and approved with the original consent which remains valid.

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for in-fill self-care housing (also referred to as 'Seniors Living').

The application has generally been submitted to satisfy the conditions of consent and some minor changes including new skylights, changes to highlight windows and changes in the external material. The original assessment of the development against the SEPP (HSPD) is still relevant and is included below.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows:

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) make efficient use of existing infrastructure and services, and*
- (c) be of good design.*

Comment:

a) Supply - The proposal includes six (6) units for self-contained living of seniors housing or people with a disability. As such, the proposal will increase the supply and diversity of residences that meet the needs of seniors and people with a disability within the area;

b) Infrastructure - The proposal is within an established residential area with access to public transport (buses) and a main road to enable travel to the central business areas of Dee Why, Narrabeen / Mona Vale, Brookvale and the City. The site is located within 400m of the nearest bus stop and the local retail centre, (Augusta Shopping Centre) at Veterans Parade which provides a range of essential retail and commercial services, see maps below which show the shopping centre being located 397.8m from the site and the bus stops 285m and 370m from the site. As such, the development makes efficient use of existing infrastructure and services, this is discussed in greater detail below.

c) Design - The development is of a contemporary design comprising a two storey building / pavilion to the front and a single storey building / pavilion to the rear located within a landscape setting. The development is well articulated and subject to conditions provides a good level of residential amenity and meets the accessibility requirements of the SEPP.

The proposal generally complies with the built form controls of the SEPP and the height, bulk and

massing is appropriate within the streetscape. The modification address the design modification conditions imposed in the original consent relating to the side set back of the two storey building and windows, the development will not have unreasonable amenity impacts on neighbouring properties in terms of visual privacy and bulk and scale. In summary, the design of the development is acceptable for the reasons discussed in detailed within this report.

Chapter 2 – Key Concepts

Comment:

Key concepts of SEPP HSPD include:

- The definition of "Seniors" as persons aged 55 or more years, including a facility of residential care or those eligible for aged housing provided by a social housing provider.
- The provision of purpose built housing for "people with a disability" that includes persons with long term or permanent impairment, limitation or activity restrictions that affect their capacity to participate in everyday life.
- The provision of purpose built "Seniors housing" with the intent that such housing includes a residential care facility, a hostel, a group of self contained dwellings or a combination of these, but not a hospital.

The proposal falls within the definition of "**in-fill self-care housing**" which is seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care.

The proposal satisfies this element of the SEPP HSPD in that the development is for purpose built self-contained dwellings that are for self-care accommodation of seniors or persons with a disability.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Pursuant to Clause 18 of SEPP HSPD a condition requires a positive covenant to be placed on title restricting the occupation of seniors housing to seniors or people who have a disability, people who live within the same household with seniors or people with a disability or staff employed to assist in the administration of and provision of services to housing provided under the Policy.

The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and	An Accessibility Report has been submitted in the original DA by Accessibility Solutions which concludes that the development has satisfactory access to a range of shops, services and public transport. The site has access to public transport (buses) services (see map above) to the central	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	(b) community services and recreation facilities, and (c) the practice of a general medical practitioner	business areas of Dee Why, Brookvale, Narrabeen / Mona Vale and connecting services to the City. These local centres all contain a range of services for banking and finance, shopping and groceries, postal and government offices, community services, medical services and recreation facilities.	
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400 metres away.	<p>Clause 26(2) (a) of the SEPP requires the site to be within 400m walking distance of shops, services and public transport. It is noted that the accessible report refers to the site being located approximately 425m from the shopping centre at Veterans Parade. The distance to shopping centre has been calculated as being less than 400m.</p> <p>The accessibility report calculates the site being 120m to 370m to the relevant bus stops (both having benches and one being sheltered) on Rose Avenue to access bus routes 146 / E79 which travel to Dee Why, Brookvale, Warringah Mall and Military Road to Sydney City. It is noted that the bus stops have benches and one is sheltered to allow passengers to rest and have shelter.</p> <p>With respect of footway access the gradient of Berith Street and Rose Street has been assessed as compliant with Clause 26(2) of the SEPP. The original consent included a condition which requires the applicant to construct a 1.5m wide footpath to be constructed on the east side of Berith Street to provide a level connection to the footpath on Rose Avenue which connects to the bus stops along the street. This condition remains valid.</p>	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	Not applicable	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage	Reticulated water and sewerage is available. The proposal is subject to Sydney Water requirements via a "Section 73 Certificate". This issue was addressed by conditions in the original DA which remain valid.	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	infrastructure.		
29	<p>Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v):</p> <p>i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development.</p> <p>iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision.</p> <p>v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.</p>	<p>A site compatibility certificate is not required. Despite this, Clause 29 requires consideration of certain criteria specified in clause 25 (clause 25 relates to site compatibility and cumulative impacts). An assessment of the relevant criteria was detailed in the original DA and is summarised below:</p> <p>i) The proposed self contained infill seniors housing is compatible with the natural environment and the existing / surrounding residential land use and the neighbouring school. Potential environmental hazards, such as those associated with excavation and stormwater are managed through appropriate conditions to ensure that there are no unreasonable impacts to neighbouring uses.</p> <p>ii) The site is accessible to a range of retail, community, medical and transport services subject to a condition requiring the construction of an accessible footpath along Berith Street. The original DA was also subject to a condition requiring the payment of Section 7.12 contributions to assist in providing future demand for local services and infrastructure as appropriate. Stormwater will be connected to Councils infrastructure in Berith Street and conditions are included in the original DA requiring the stormwater design to be amended to comply with Council Policy. All these conditions remain valid.</p> <p>Condition imposed in the original consent relating to parking have been included in the subject DA and will result in 10 car parking spaces, including 2 visitor spaces. Details have been submitted to satisfy the conditions to the satisfaction of Council's Transport Officer.</p> <p>v) The SEPP (HSPD) allows for a higher density than that normally permitted within low density residential areas. The combination of single storey and two storey elements is generally compliant with the built form controls of the SEPP, the WLEP and WDCP. The average 14.5m setbacks and landscape setting combined with building articulation, external</p>	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
		<p>materials, balconies and fenestration generally help reduce the building bulk and minimises the impact of the front two storey building on the neighbouring character.</p> <p>In order to further ensure the proposal is consistent with the neighbourhood character conditions are recommended to modify the materials of the balcony to a more create a more lightweight structure and increase side set backs to improve spatial separation issues that affect the visual and amenity of the neighbouring dwellings. Shadow diagrams confirm that the bulk and massing will not result in unreasonable impacts on solar access to neighbouring properties and impacts on visual privacy are addressed by condition requiring highlight windows and angled fixed privacy screens attached to upper floor windows and perimeter planting and new fencing.</p> <p>Details have been submitted in the subject modification to satisfy the conditions relating to windows and privacy screens and require a more lightweight structure to the front balcony. In summary, for the reasons outlined above and elsewhere within this report, the modification satisfies the conditions and is considered acceptable. The development remains to be compatible with the bulk, scale built form and character of the surrounding area.</p>	
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A site analysis has been provided.	Yes

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing	<p><u>Built Environment:</u></p> <p>The pattern of development in the</p>

Section	Requirements	Comment
	<p>residential neighbourhood in terms of built form.</p> <p>Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	<p>neighbourhood can be described as contains a mix of low density development with places of higher density housing interspersed.</p> <p>The development typology remains to consist of contemporary one and two storey buildings / pavilions. The articulation of the proposed development will maintain semi-detached appearance from the street. The proposal follows the orientation and pattern of development in the street. There is no change to the footprint or set back which generally follows the set back of other developments along the east side of Berith Street allowing the development to sit within a landscaped setting. The front balconies have been modified to be a more light weight construction to ensure the character of the area is preserved.</p> <p><u>Policy Environment:</u> The site is located with a R2 Low Density Residential zone within the Warringah LEP. The objectives for the zone include:</p> <ul style="list-style-type: none"> • To provide for the housing needs of the community within a low density residential environment, • To enable other land uses that provide facilities or services to meet the day to day needs of residents; and • To ensures that low density residential environments are characterised by landscape settings in harmony with the natural environment. <p>The proposal achieves these objectives for the character of the area in that it will provide to the needs of the community for HSPD housing. The proposed one and two</p>

Section	Requirements	Comment
		<p>storey built form set within a landscape setting is generally compatible with the built form bulk and height to surrounding development.</p> <p>There is no change to the height, bulk and scale of the development which remains to be compliant with the maximum 8m building height contained in the SEPP and the 8.5m height of building development standard contained in the WLEP. The proposal also remains to be generally complies with the built form controls contained within the WDCP.</p> <p>The modification includes the removal of a liquid amber tree located within the road reserve adjacent to the proposed accessible footpath. This is an exempt species and presents hazards for residents in terms of access to and from the site. Council's Landscape Officer has no objections to the removal of this tree subject to condition requiring its replacement with an appropriate tree species. Subject to this condition, the site provides a sufficient landscape set back to allow for additional planting to maintain the character of the area and comply with landscaping requirements of the SEPP.</p>
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Minimise the impact of new development on neighbourhood character; -Retain existing natural features of the site that contribute to neighbourhood character; -Provide high levels of amenity for new dwellings and a range of housing choice; -Maximise deep soil and open space; 	<p>There is no change to the bulk of the development which is located towards the frontage and reduced to the rear in compliance with the recommendations of the Policy. The setbacks and landscape setting allows for landscape planting to maintain the existing pattern and character of gardens and trees in the locality. The principle deep soil zone is located to the rear in accordance with the design principles. The existing driveway location and crossing is retained and the basement parking will ensure there will be no visual impact of car</p>

Section	Requirements	Comment
	-Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	parking on the street.
3. Impacts on streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Ensure that new development, including the built form, front and side setbacks, trees, planting and front fences, is designed and scaled appropriately in relation to the existing streetscape; -Minimise dominance of driveways and car park entries in streetscape. -Provide a high level activation and passive surveillance to the street.	As details above, the setbacks do not change and the landscaped setting, with the requirement of additional planting, will enhance the desirable characteristics of the street. The development, as modified, retains clearly defined open private and communal spaces which allows for passive surveillance to the street.
4. Impacts on neighbours	Objectives of this section are to: -Minimise impacts on the privacy and amenity to neighbouring dwellings; -Minimise overshadowing; -Retain neighbours' views and outlook to mature planting and tree canopy -Reduce the apparent bulk and -Provide adequate building separation.	The modification provides sufficient details in the form of amended plans to satisfy the conditions relating to privacy screens, setbacks and landscaping. The proposal, as amended, will not cause unreasonable impacts on neighbours amenity in terms of loss of visual or acoustic privacy. There is no change to impacts on solar access or views and the building separation at the upper level has been improved with the amended plans which show a 500mm increase in the set back of the first floor to the side boundaries.
5. Internal site amenity	Objectives of this section are to: -Provide quality usable private and communal open space to all residents; -Provide dwellings that have distinct identity and safe entries; -Provide safe and distinct pedestrian routes to all dwellings and communal	There is no change in the size of the private terraces and decks or communal courtyard which all exceed the SEPP requirements. The proposal remains to have compliant solar access and all dwellings have distinct identity and safe entries.

Section	Requirements	Comment
	facilities; -Ensure solar access to living areas and private open space; -Reduce the dominance of parking, garaging and vehicular circulation space.	

Clause 32 Design of residential development In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	<p>There is no change to the density of the development and it is noted that the SEPP allows for a greater density of development than provided under the WLEP and WDCP. The proposal remains generally compliant with the density / FSR controls.</p> <p>The original DA was assessed as contributing to the quality and identity of the area. The modification includes some minor design changes which will not change the original assessment. The development remains to present a two storey building / pavilion which is well articulated with front and side setbacks and a landscape setting that is consistent with the subdivision pattern in the area. The modification includes some minor changes to the materials which will help enhance the proposal / streetscape. The subject application includes an increase in the spatial separation of the two storey building to the side boundaries to minimise impacts in neighbouring amenity.</p>	Complies
	b. Retain,	No heritage items are on the	N/A

Control	Requirement	Proposed	Compliance
	<p>complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.</p> <p>c. Maintain reasonable neighbour amenity and appropriate residential character by;</p> <p>(i) providing building setbacks to reduce bulk and overshadowing</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</p> <p>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.</p>	<p>site or in close proximity.</p> <p>The subject application includes changes to the windows to ensure that neighbour amenity will be maintained.</p> <p>(i) there is no change to the built form / shadow impacts.</p> <p>(ii) the built form and siting of the development remains to be the same as the original approval and provides a site layout that is practical and has an orderly and efficient layout that maintains opportunities for deep soil landscaping.</p> <p>(iii) the two storey front building / pavilion complies with the maximum 8m height development standard and is generally compatible with the height of other residential development in the area.</p> <p>(iv) both buildings are sited between a 2.5m and 3m to the side boundaries and between 5m to 6.7m to the rear. The proposal increases the set back of the upper floor of the two storey building in part from the side boundaries, in compliance with the conditions to reduce impacts on neighbouring amenity. The proposal includes details on the earthwork adjacent to the rear boundary to ensure the height of boundary fencing is minimised.</p>	<p>Complies</p>
	<p>d. Be designed so that the front building of the development is set back in sympathy</p>	<p>The siting of the front building remains to be consistent with the established building line along the east of Berith</p>	<p>Complies</p>

Control	Requirement	Proposed	Compliance
	<p>with, but not necessarily the same as, the existing building line.</p> <p>e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.</p> <p>f. retain , wherever reasonable, major existing trees, and</p> <p>g. be designed so that no building is constructed in a riparian zone.</p>	<p>Street.</p> <p>Landscaped open space and deep soil zones are provided to the front and rear of the site to enable continuity with adjacent gardens.</p> <p>The modification includes the removal of the liquid amber street tree which is supported by Council's Landscape Unit subject to conditions, refer to discussion under the heading Referrals.</p> <p>The site is not within a riparian zone.</p>	<p>Complies</p> <p>Complies</p> <p>N/A</p>
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The modification includes amendment to windows to ensure visual and acoustic privacy is managed in compliance with the conditions in the original consent.	Complies
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site	The height, footprint and density of the development has not changed therefore there is no material change to the shadow impacts. It is noted that the approved scheme complied with the Warringah DCP controls in relation to neighbour's properties and private open space.	Complies

Control	Requirement	Proposed	Compliance
	planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	A condition requires compliance with the BASIX certificate submitted with the original DA which remains valid.	
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention (OSD) and water re-use.	A new stormwater connection will be required direct to the kerb pit in Berith Street. A condition in the original DA requires the stormwater and OSD to be redesigned in accordance with Council's stormwater policy, and <i>Technical Specification</i> . This condition remains valid.	Complies. Subject to engineering conditions in the original consent.
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who	The proposed driveway access can be observed from within the site allowing for passive surveillance from the front courtyards, balconies and windows. Bollard lighting will be provided to ensure pathway areas are lit for safety and security. Separate access is provided to each unit via a shared central corridor.	Complies. No change

Control	Requirement	Proposed	Compliance
	approaches their dwellings without the need to open the front door.		
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	<p>An accessibility report has been submitted with the original DA which concludes that the development complies with accessibility and adaptability requirements of the SEPP.</p> <p>It is noted a condition required the re-design of the accessible footpath adjacent to the liquid amber street tree (T1) to reflect the recommendations of the arborist report.</p> <p>The tree is proposed to be removed consequently this condition is no longer relevant.</p> <p>The condition requiring the construction of a 1.5m wide footpath along Berth Street to connect to the footpath along Rose Avenue remains valid. This will ensure that access is available to public transport to access a range of shops and services.</p> <p>Safe and convenient pedestrian and vehicular access is provided to the site. The number of car parking spaces comply with the relevant controls and details have been submitted to demonstrate compliance with the access and parking conditions to the satisfaction of Council's Traffic Engineer.</p>	Complies Condition relating to accessible footpath adjacent to street tree to be deleted.
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The redesign of the garbage bin storage room located at the front of the site has been assessed as acceptable and compliant with the conditions in the original DA. The modified design includes the removal of the bulky good	Complies

Control	Requirement	Proposed	Compliance
		storage as this was not required.	

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1,269 sqm	Complies (no change)
Site frontage	20 metres	20.13m (Berith Street)	Complies (no change)
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	7.5m	Complies (no change)
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	The front building is 2 storey in height at the side boundary and the rear building is single storey. All buildings are set back a minimum 2.0m or greater setback from the side boundary.	Complies (no change)
	A buildings located in the rear 25% of the site must not exceed 1 storey in height. Consideration of the objectives of the 25% rear height control setback is made to assess consistency against the urban design objectives sought by the SEPP HSPD.	The rear 25% of the site covers an area 15.7m x 20.1m = 315.5 sqm. A single storey building / pavilion is located within this zone which is compliant with the height control.	Complies (no change)

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	An access report has been provided by Accessibility Solutions, dated 15 October 2018, demonstrating appropriate access requirements have been met to satisfy SEPP HSPD. The gradient for wheelchair access on the site and along Berith Street and Rose Avenue has been assessed as acceptable. Conditions were included in the original DA that required the construction of an accessible footpath from the subject site along Berith Street to Rose Street and the design of the accessible footpath adjacent to the liquid amber street tree to be modified in accordance with the recommendations of the arborist report. The removal of the liquid amber tree has addressed issues with the accessible footpath. It is recommended that the access condition be amended to reflect this modification.	Complies
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Bollard style lighting is to be used adjacent to the pathways.	Complies (no change)
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable,	Letterboxes are located to the frontage of the site on a hard stand in an accessible location. A condition requires the accessible path to be designed to ensure a sufficient hard stand area is provided adjacent to the letterboxes.	Condition recommended to ensure compliance (no change)

Control	Required	Proposed	Compliance
	and (c) must be located together in a central location adjacent to the street entry.		
Private car accommodation	(a) Carparking space must comply with AS2890 (b) One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	Compliant disabled persons carparking space is provided for each dwelling in the basement and the basement car park has a power operated door. Details have been submitted to address the conditions to the satisfaction of Council's Transport Engineer.	Details have been submitted to ensure compliance.
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Each dwelling has an accessible path of travel to the front entry. Upper floor units rely on lift and stair access.	Complies (No change)
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Open plan living areas, bathrooms and bedrooms comply.	Condition recommended to ensure compliance (No change)
Bedroom	At least one bedroom within each dwelling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	Proposal is able to comply	Condition recommended to ensure compliance (No change)

Control	Required	Proposed	Compliance
Bathroom	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	Proposal is able to comply	Condition recommended to ensure compliance (No change)
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Proposal is able to comply	Condition recommended to ensure compliance (No change)
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Proposal is able to comply	Condition recommended to ensure compliance (No change)
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Proposal is able to comply	Condition recommended to ensure compliance (No change)
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Proposal is able to comply	Condition recommended to ensure compliance (No change)
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Proposal is able to comply	Condition recommended to ensure compliance (No change)
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	Proposal is able to comply	Condition recommended to ensure compliance (No change)
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Proposal is able to comply	Complies (No change)
Laundry	The laundry must	A laundry facility is provided	Condition

Control	Required	Proposed	Compliance
	comply with the requirements of Clause 19 of Schedule 3.	for each dwelling. Private open space terraces also allow for open air clothes drying.	recommended to ensure compliance (No change)
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	Proposal is able to comply	Condition recommended to ensure compliance (No change)
Garbage	A garbage storage area must be provided in an accessible location.	Garbage bin storage room is located at the front of the site in an accessible location. Details have been submitted to demonstrate compliance with the condition which requires the bin storage room to comply with Council's Policy under the Warringah DCP and be set back a minimum of 0.9m from the southern boundary.	Complies with the conditions

Part 5 - Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site as the site is zoned low density residential.

Part 6 - Development for vertical villages

This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below).	7.0m	Complies (No change)
Density and scale	0.5:1 (634.5sqm GFA)	0.57:1 (727sqm GFA)	The proposal exceeds the 0.5:1 FSR (634.5sqm) by

Control	Required	Proposed	Compliance
			92.5sqm. The modified proposal includes a 500mm increase in the set back to the mid section from the north and south boundaries for a length of 7.1 m along the mid-point of the side elevation which will have a slight reduction in the GFA. The modification satisfies the condition of the original consent.
Landscaped area	30% of the site area is to be landscaped.	35% (493sqm) of site area is landscaped	Complies (No change)
Deep soil zone	15% of the site area deep soil (190 sqm). Two-thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	16% (203sqm) of site area is deep soil of 1m depth or more. The majority of deep soil planting is provided to the rear and has a minimum dimension of 3m.	Complies (No change)
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter.	Three (3) hours direct light between midday to 3pm 21 June available is available to the living rooms and private open space to units 1, 2,3,4 and 6. Two (2) hours direct light between 9am to 12pm 21 June available to the living rooms and private open space of unit 5.	Complies for 83% of the units. (No change)
Private open space	15sqm of private open space per dwelling not less than 3 metres long	Unit 1: 43sqm Unit 2: 33sqm Unit 3: 19sqm Unit 4: 19sqm	Complies (No change)

Control	Required	Proposed	Compliance
	and 3 metres wide.	Unit 5: 85sqm Unit 6: 84sqm	
Parking	0.5 spaces per bedroom. (16 bedrooms proposed – 8 carparking spaces required)	8 carspaces for 16 bedrooms.	Complies (No change)
Visitor parking	Visitor car parking is not required for developments with less than 8 units.	A total of eight (8) car residential parking spaces and two (2) visitor parking spaces are provided in the basement in compliance with the condition of consent.	Complies

Chapter 4 – Miscellaneous

Comment: No miscellaneous provisions apply to the proposal.

In summary, the developments performance when assessed against the provisions of SEPP (HSPD) are not compromised as a consequence of the modifications sought.

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 original 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. The subject modification does not trigger a referral to Ausgrid.

Warringah Local Environmental Plan 2011

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

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.7m	7.7m (no change)	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

Detailed Assessment

6.2 Earthworks

The subject site falls under Area A on the Landslip Risk Map which is defined by a slope of less than 5 degrees. In this regard, the application is accompanied by an updated geotechnical site investigation report addressing the changes to the previously approved excavation which is noted to include a 3.3m increase the extent of excavation. Compliance with the recommendations of the updated geotechnical report is included in the section 4.55 conditions.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	6.2m - 6.9m	No change	Yes
B3 Side Boundary Envelope	4m/5m (North)	Within envelope	No change	Yes
	4m/5m (South)	Within envelope	No change	Yes
B5 Side Boundary Setbacks	0.9m (North)	1.7m - 3m	1.7m - 3m	Yes
	0.9m (South)	1.5m - 3m 0 - to bin store	1.7m 0-3m 0.9m to bin store	Yes Yes
B7 Front Boundary Setbacks	6.5m	9.4m to terrace 16.7m to ground floor 0 - letterbox / entry gate	No change	Yes No
B9 Rear Boundary Setbacks	6m	3m - terrace 5m - 6.7m to rear wall	No change	No No
D1 Landscaped Open Space and Bushland Setting	40%	35% (493sqm)	No change	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
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
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B9 Rear Boundary Setbacks

There is no change in the footprint of the building which has a setback of between 5m - 6m from the rear boundary.

The proposal remains to be consistent with the objectives of the control in that it provides opportunities for deep soil landscaping. The setback provides for visual continuity and patterns of buildings to the rear it creates a sense of openness to the rear and ensures that there will be no unreasonable impacts on neighbouring amenity including privacy between dwellings.

C3 Parking Facilities

The subject application address the requirements of Council's Transport Officer providing 2 visitor car parking space which was imposed as a condition in the original consent to address the concerns from neighbours in respect of impacts of the availability of kerb side parking.

D1 Landscaped Open Space and Bushland Setting

The modification does not change the amount of landscape open space provided on the site which under the original DA equated to 35% of the site area (5% breach of the control). The proposal remains to be fully compliant with the landscaping controls of the SEPP (HSPD). The total landscaping on the site is 493sqm (35%) with the deep soil zones exceeding 15%.

The modification proposal remains to be consistent with the objectives of the control in that it will provide for sufficient space to enable planting to maintain and enhance the streetscape which will also help mitigate the height, bulk and scale of the building and allow for privacy between dwellings.

D6 Access to Sunlight

The original proposal complies with the control with more than 50% of the private open space receiving a minimum 3 hours of sunlight between 9am and 3pm on June 21 in compliance with the solar access provisions. Despite this condition 11 required that part of the side wall (midsection) of the proposed front two storey building is setback an additional 500mm from the north and south boundaries in order to help reduce the building bulk to the side and assist with solar access.

The subject modification complies with condition 11 and includes a partial set back of the upper floor of front building from the side boundaries.

D8 Privacy

In order to address issues with respect of privacy between the subject development and the adjoining properties condition 11 (c) (iv) requires windows to be modified to be either high level or have external privacy screens installed.

The subject modification provides details of the amended design which demonstrates a generally compliance with the condition. There is one exception which is noted to relate to kitchen window to units 5 and 6 located in the side elevations. The proposal includes a reduction in the height of the kitchen window from 1500mm to 600mm in lieu of the installation of privacy screens. Given that the windows relate to the ground level units located to the rear of the site it is not expected that the small kitchen window will result in unreasonable privacy impacts given the neighbouring dwellings are sited forward of units 5 and 6.

D9 Building Bulk

The height, bulk and scale of the development remains to be generally consistent with that approved in the original DA.

In order to reduce the visual impact of the continuous wall plane and improve the urban environment for

the adjacent properties, condition 11 (c) (i) required bedrooms 2 and 3 to units 3 and 4 to be recessed a further 500mm. The subject modification demonstrates compliance with this condition.

Condition 11 (c) (ii) required the balcony balustrade to include more lightweight elements (up to 50%) that may be a glazed section, or other suitable lightweight suitable open-style balustrade material in order to reduce the visual impact of the wide and solid, double front balconies when viewed from the street frontage. The subject modification demonstrates compliance with this condition.

Furthermore, condition 11(c) (iii) requires the materials and finishes to the single storey dwelling to be further¹ considered and amended in order to reduce the visual impact to adjoining properties. The subject modification demonstrates compliance with this condition providing

D14 Site Facilities

The proposal has been amended to address the requirements of Council's Waste Unit and the bin store has been reposition 1m from the side boundary and the bulky good storage deleted in compliance with condition 11 (b) (i).

E1 Preservation of Trees or Bushland Vegetation

The subject modification includes the removal of the liquid amber street tree which is located adjacent to the pedestrian entry to the development and the required new public footpath. The applicant justifies the removal of the tree and replacement planting on the basis that the liquid amber tree impacts on the safety of residents and the public caused by the seed pods of the tree which present a slip hazard. It is agreed that pedestrian traffic is likely to increase as a result of the public and private works and the justification is therefore supported, additionally, the new footpath works are likely to impact on tree roots. Council's Landscape Officer has no objections to the removal of the tree, which is noted to be an exempt species, subject to a condition requiring the planting of two (2) native trees in the road reserve.

It is also noted that in order to address the condition requiring changes to the basement car park to allow for 2 visitor parking space the basement wall will extended further toward the street which will impacts on a tree previously conditioned for retention (Tree 4). Council's Landscape Officer has confirmed that the tree is only in fair condition and it is recommended that approval to remove the tree be included in conditions, subject to replacement.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation

submitted by the applicant and the provisions of:

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

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

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

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

Basement

The basement design being has been amended to address condition 11 of the original consent which included a requirement to provide two (2) visitor spaces in order to address concerns from neighbours regarding the impacts on the availability of kerb side parking. As a consequence of compliance with the condition the basement extends 3.3m closer to the street frontage. There is no increase in the depth of excavation or extension to the side boundaries. Subject to compliance with the amended geotechnical report the minor extension of the basement will not result in unreasonable impacts on neighbouring properties. All conditions relating to excavation and construction management imposed in the original consent also remain valid.

Tree removal

As a result of the slight increase in the basement excavation tree 4 will need to be removed. Subject to the replacement planting Council's Landscape Officer has no objections to the removal of tree 4. The applicant also seeks the removal of the liquid amber street tree, an exempt species, which is located adjacent to the proposed accessible footpath. The applicants justifies the removal of the tree on the basis of it presents a slip hazard to pedestrians. The justification is supported and subject to a condition requiring the replanting of two (2) native trees within the reserve Council's Landscape Officer has no objections to its removal.

Neighbouring amenity

The modification plans generally address condition 11 of the original consent in terms of ensuring visual privacy is maintained with high level windows and the addition of privacy screens to windows and balconies.

External

The modification plans include changes to the external materials to ensure that the building is appropriately articulated. The plans provide for a partial increase in the setback of the upper floor of the front building which will reduce the visual dominance of the building as viewed from the side boundaries.

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. Mod2021/0160 for Modification of Development Consent DA2019/1173 granted for demolition of existing development and construction of a Seniors Housing development comprising 6 x infill self care housing units and basement parking, and strata subdivision on land at Lot A DP 411784,3 Berith Street, WHEELER HEIGHTS, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A02 Basement version S4.55	07.11.2018	Barry Rush and Associates Pty Ltd
A02 Site and Ground Floor Plan version S4.55	07.11.2018	Barry Rush and Associates Pty Ltd
A02 First Floor Plan version S4.55	31.05.2021	Barry Rush and Associates Pty Ltd
A05 Roof Plan version S4.55	07.11.2018	Barry Rush and Associates Pty Ltd
A06 Elevations version S4.55	31.05.2021	Barry Rush and Associates Pty Ltd
A07 North Elevation internal elevations version S4.55	03.08.2020	Barry Rush and Associates Pty Ltd
A08 Sections version S4.55	16.02.2021	Barry Rush and Associates Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report Ref: 32859SF rptRev1 Section 4	26 March 2021	JK Geotechnics

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

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

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

B. Modify Condition 10 Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans to read as follows:

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Investigation Report; White Group, Reference No: J2436, Dated: 17 October 2019, the JK Geotechnical Peer Review Report Ref: 32859YFlet dated 13 December 2019 and the JK Geotechnical Investigation Report Ref: 32859SFrt, Dated: 20 January 2020 **and the Geotechnical Report Ref: 32859SFrt Rev1 prepared by JK Geotechnics dated 26 March 2021** are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

B. Modify Condition 11b) to add part iii) to read as follows:

The proposed 1.8m high timber boundary fence between No. 3 and 5 Berth Street shall follow the slope of the land and be erected to maintain the height of the existing boundary fence.

C. Add Condition 55 c) and d) Required Planting to read as follows:

c) Required Tree Planting

Trees shall be planted in accordance with the following:

- i) 1 x Banksia integrifolia, located in the front yard to replace tree 4; minimum pot size 75 litre.

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.

d) Street Tree Planting

Street trees shall be planted in accordance with the following:

- i) 2 x Eucalyptus haemastoma; located in the Berth St road reserve forward of the property, clear of driveway sightlines and generally in alignment with other street trees; minimum pot size 25 litre.

All street trees shall be a minimum planting size of 25 litres, and shall meet the requirements of Natspec - Specifying Trees.

All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained including a four

post and top and mid rail timber tree guard and watered until established.

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

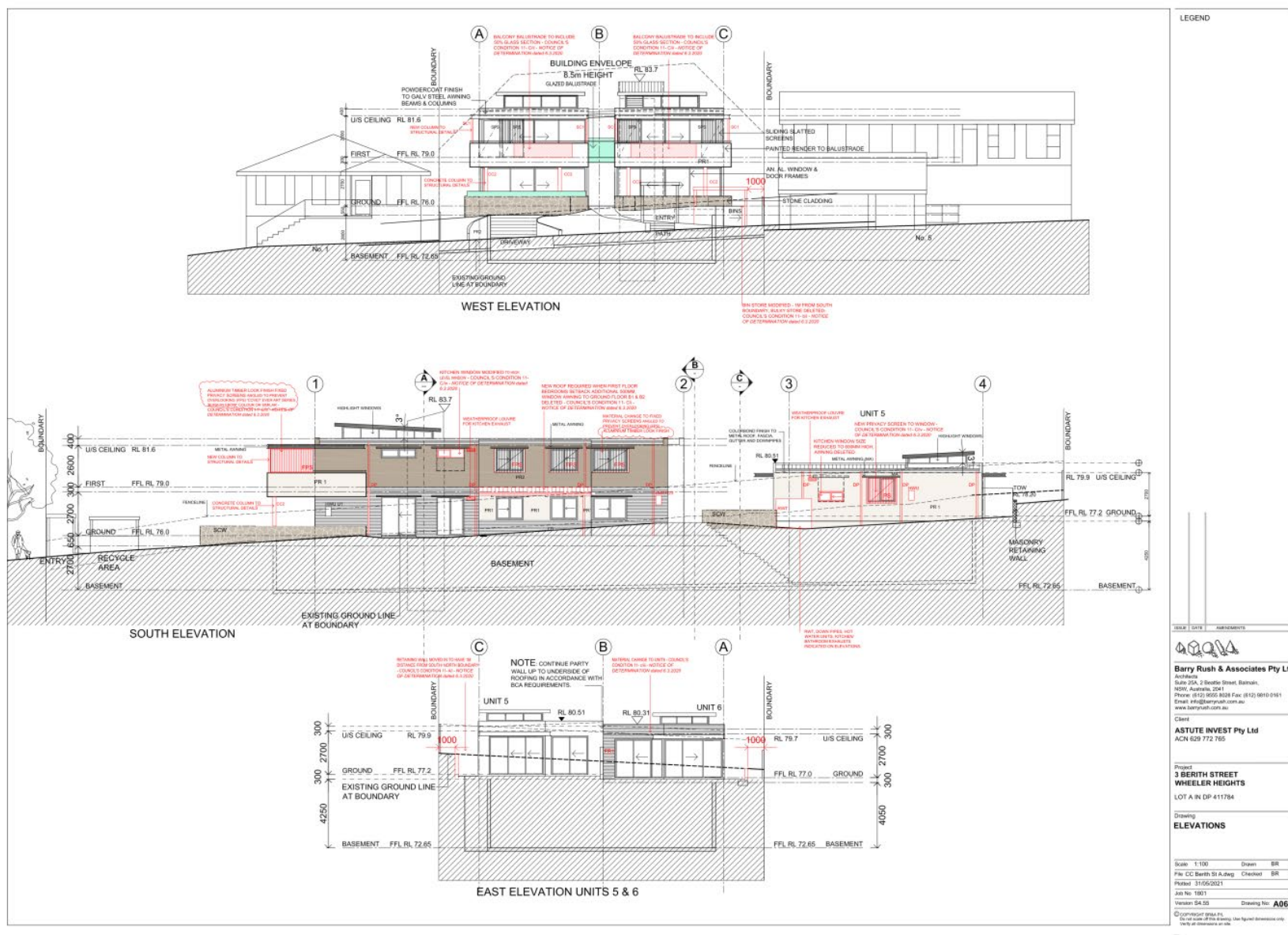
Reason: To maintain environmental amenity.

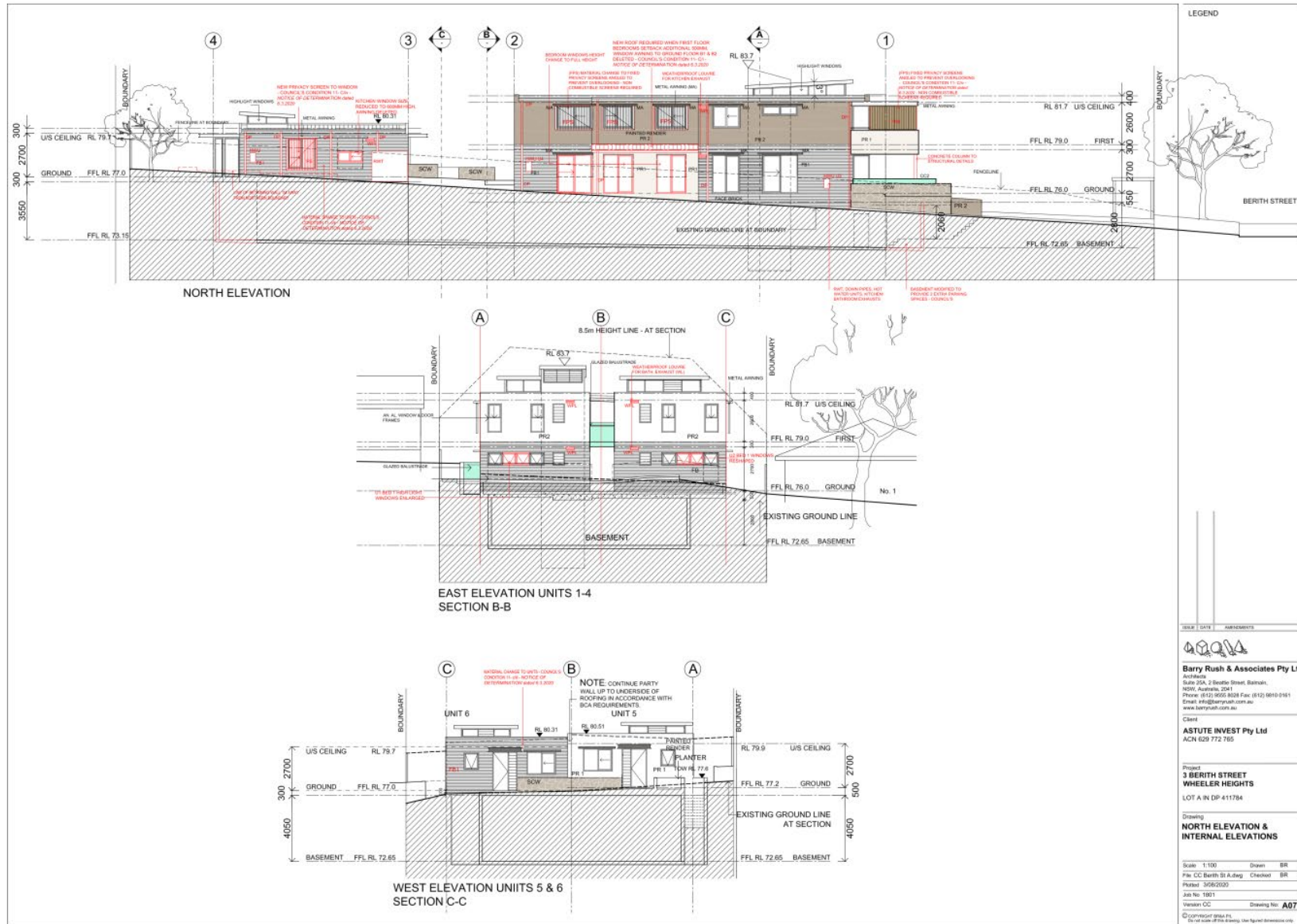


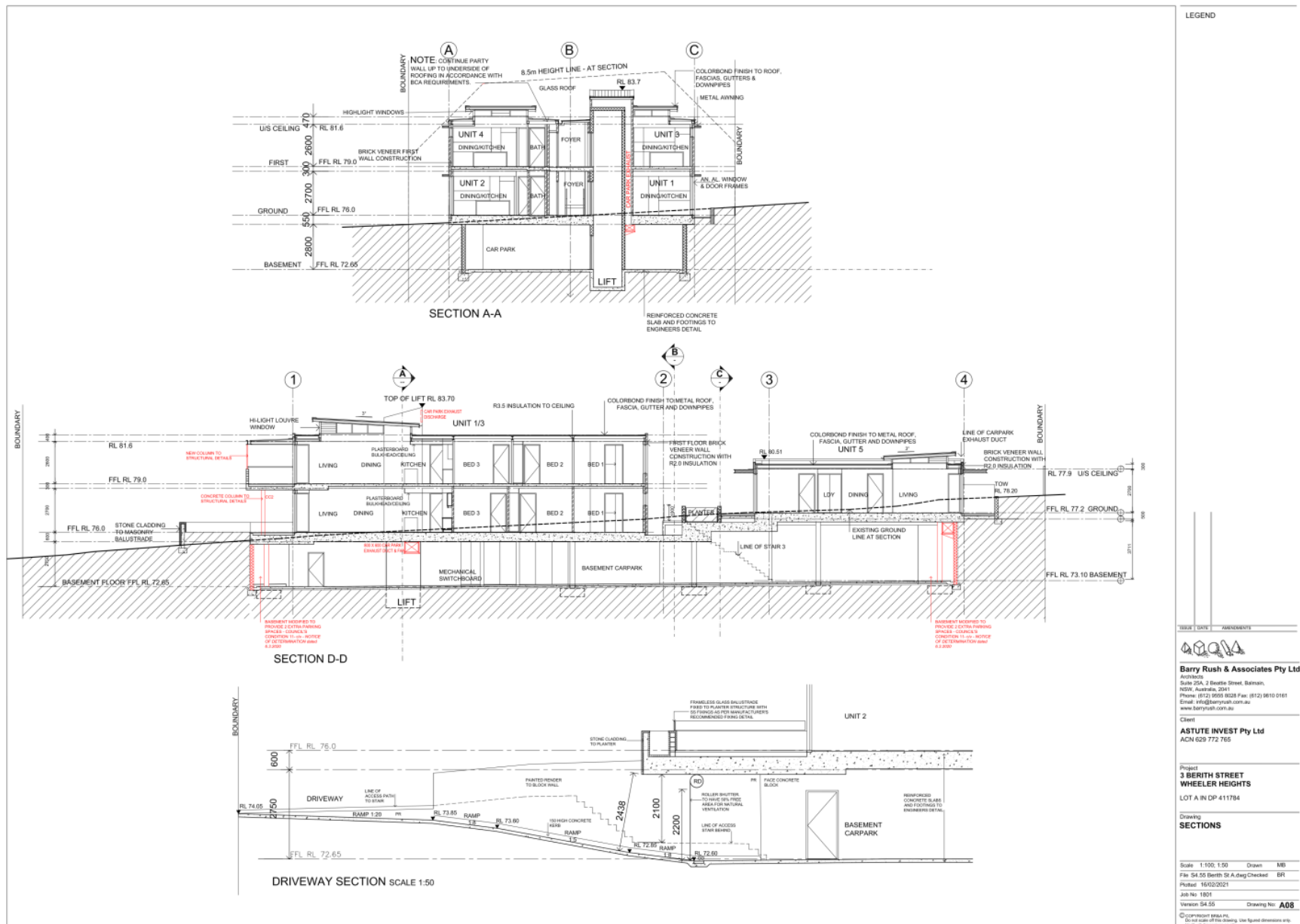












ITEM 3.3	DA2020/1380 - 64 WOODLAND STREET, BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2021/431276
ATTACHMENTS	1 Assessment Report 2 Working Plans

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council, as the consent authority, **approves** Development Consent to DA2020/1380 for Alterations and additions to dwelling house on land at Lot 5 DP 9928, 64 Woodland Street, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1380
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 5 DP 9928, 64 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Anthony Paul Korbel Rachel Anne Korbel
Applicant:	Rachel Anne Korbel
Application Lodged:	13/11/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/04/2021 to 28/04/2021
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,400,000.00

PROPOSED DEVELOPMENT IN DETAIL

The proposed works are described as follows:

Demolition of the internal and external stairs, slabs and terraces at the existing Lower Ground Floor Level at RL 56.93 AHD. The proposed lower ground floor level is at RL 56.83 AHD and has a master bedroom with an en-suite; laundry; water closet; and storage area. A dining area and bar is proposed and internal steps lead to a living area at RL 56.36 AHD, oriented towards the rear of the site. Glazed sliding doors at the rear elevation provide access from the living area to the outdoor terrace, with stairs leading to the landscaped garden at the rear.

The proposal includes a new swimming pool with planters and an infinity pool edge. The pool pump will be located below the swimming pool and concealed from view. The lower ground floor level will be

accessible from the proposed internal stairs, with replacement external stairs along the northern boundary providing access between the front and rear of the site

Lower Ground Floor:

- Demolition of existing internal and external stairs and walls.
- Construction of Master bedroom with ensuite
- Laundry
- Open plan living/dining/bar
- Storage room
- Swimming pool (outdoors)

Ground Floor:

- Demolition of some internal walls, and existing garage
- Construction of 3 bedrooms
- 1 ensuite
- Open plan living/dining/kitchen
- Rear deck
- New garage

Roof:

- Replace tiled roof with corrugated metal roofing

The applicant amended the plans during the assessment process, in response to the submissions received. The amendments made to the plans are listed as follows:

Lower Ground Floor

- Increased southern side setback to the proposed extension and reduced envelope of Master Bedroom;
- Deletion of northern stairs adjacent to the swimming pool;
- Deletion of former northern courtyard; retention of rock formation and provide service access;
- Retention of an existing landscaped buffer along the northern boundary adjacent to the swimming pool; augmented by additional landscaping in other areas;
- Relocation of the spa from the northern side of the swimming pool to the southern corner to provide additional privacy; and
- Reduction of southern pool stair width and provision of additional screen planting.

Ground Floor

- Retention of existing ground levels, ramp, stairs, and landscaping at the northern side boundary between the subject site and adjacent dwelling; and
- Reduction of the rear terrace to align with the existing internal terrace, with an increased roof garden surrounding the terrace.

Additional Changes

- Revised stormwater management plan;
- Amendments to the roof plan and elevations, to accurately reflect the roof pitch shown in the survey;

The amended plans were re-notified to surrounding neighbours. The assessment in this report is an assessment of the amended plans.

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 - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

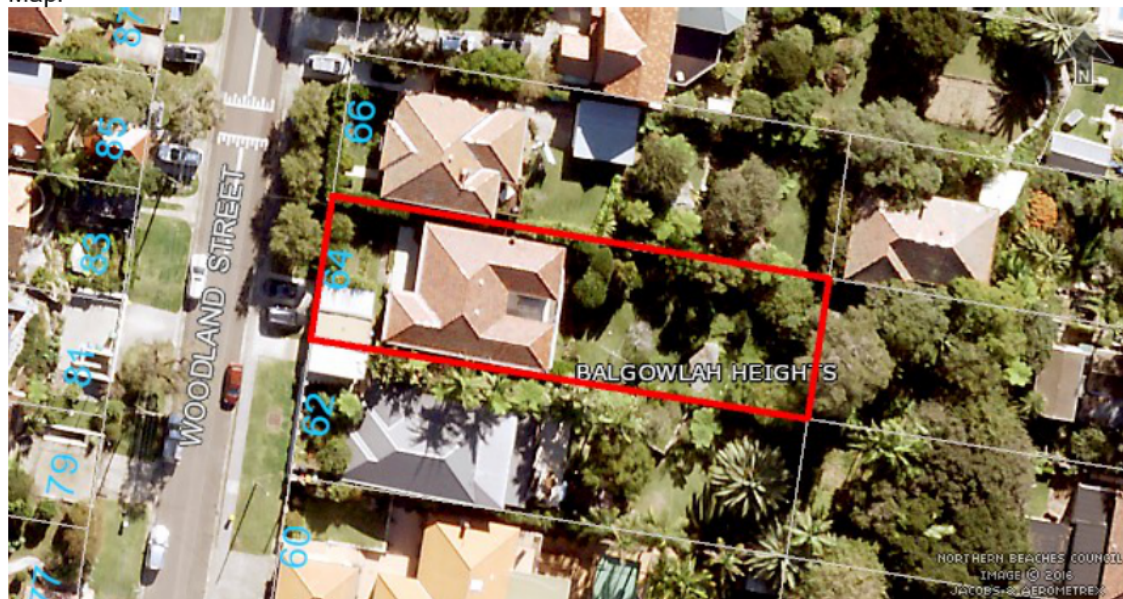
SITE DESCRIPTION

Property Description:	Lot 5 DP 9928 , 64 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The site is a rectangular shaped lot, located on the eastern side of Woodland Street. It has an area of 822sqm, a width of 15.24m, and a length of 53.95m. The topography has a significant fall from front to rear, with an approximate fall of 11.8m.</p> <p>There is an existing two storey dwelling on site, and two single garages attached to each other, but detached from the dwelling, located in the south eastern corner of the site on a nil setback to the front and side boundaries.</p>

The site contains various mature trees, and large rock outcrops in the rear yard area.

Surrounding development consists of detached dwellings of various heights and styles.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case, however, the applicants volunteered amended plans to attempt to address the concerns raised by neighbours.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/04/2021 to 28/04/2021 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:
Mr David Craig Turner	66 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Mr David James Watkins	27 Bungaloe Avenue BALGOWLAH HEIGHTS NSW 2093
Mr Anthony Charles McMullen	62 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Ms Alisan Smotlak	29 Bungaloe Avenue BALGOWLAH HEIGHTS NSW 2093
Ms Robyn Joy Ephgrave	33 Bungaloe Avenue BALGOWLAH HEIGHTS NSW 2093
David Watkins	Address Unknown

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

- Non-compliance with controls
- Pool
- Earthworks
- Privacy
- Visual bulk

- Geotechnical Report, Vibrations, Development on sloping sites
- Aims of LEP, DCP, zone objectives
- Streetscape
- Landscaping design
- Stormwater and overland flow
- Social and economic impacts
- Solar access

The matters raised within the submissions are addressed as follows:

- **Non-compliance with controls**

Concerns were raised with all proposed non-compliances with the relevant controls.

Comment:

Each non-compliance has been assessed in detail under the relevant sections of this report. In summary, there are non-compliances proposed with regard to the front and side setback controls, the height of swimming pools control, and the solar access control. For the reasons set out in the report, these non-compliances are supported in the circumstances of the site.

- **Earthworks**

Concerns were raised with regard to excavation and fill along the northern side boundary.

Comment:

The amendments made to the plans have deleted proposed fill and excavation in the northern side setback area. The development will now maintain existing levels in this area. The submission is considered to be reasonably satisfied in this regard.

- **Privacy**

Concerns were raised with regard to privacy impacts, particularly to the northern neighbour.

Comment:

Privacy impacts have been assessed in detail under clause 3.4.2 in this report. In summary, the proposal is not considered to result in unreasonable privacy impacts, subject to conditions of consent regarding some windows.

- **Visual bulk**

Concerns were raised with regard to the visual bulk of the development overall, including more specific references to the southern wall of the rear extension, and the proposed 'flying beam' structure adjacent to the southern side of the pool.

Comment:

The proposed rear extension is generally compliant with the relevant built form controls, with a very minor exception to the side setback control, and a more significant non-compliance caused by the height of the pool. These non-compliances are discussed in more detail in the relevant sections of this report. However, the overall bulk and scale of the development is not considered to be unreasonable. The rear extension remains well below the height limit, and generally within required setbacks. Open space and landscaped area requirements are complied with. The replacement of the existing two attached garages at the front of the site with a single double garage in the same location will have a positive impact on the streetscape, despite maintaining the existing non-compliant setback.

The southern wall is articulated with a varied setback and windows, enabling landscaped screening in the southern setback. This will reasonably mitigate the visual bulk of the wall. The flying beam is an architectural feature which is fully compliant with all built form controls. It is not a large bulky expanse of wall, but is an open structure. The pool structure is raised significantly higher than the maximum requirements (as discussed in this report), but due to the cross fall of the land it will be generally significantly lower than the dwelling and primary private open space areas of the northern neighbour, and generally well screened from view from the dwelling and primary private open space areas of the lower southern neighbour. Lowering the pool by excavating significantly into the slope of the site would enable compliance with the control, without significantly affecting amenity outcomes.

As discussed throughout this report, the proposal is not considered to result in unreasonable impacts to the amenity of neighbours, and given the general level of compliance, with overall height, setback, and landscaped area requirements is not considered to be an overdevelopment of the site. The overall visual bulk is mitigated by varied setbacks to walls and the design of the rear extension is well broken up and articulated. The submissions are not supported in this regard.

- **Aims of LEP, DCP, zone objectives**

Concerns were raised that the proposal is inconsistent with the aims of the LEP and DCP.

Comment:

The assessment has found that the proposal is generally consistent with the relevant aims of the LEP and DCP, including the zone objectives. The submissions are not supported in this regard.

- **Streetscape**

Concerns were raised with respect to streetscape impacts.

Comment:

The proposed works are mainly located to the rear of the existing dwelling and will have no significant impacts on the streetscape. The only major work proposed in the front setback area is the replacement of the existing two single attached garages with a new double garage, in the same location. The proposal will maintain the existing non-compliance in terms of front and side setback, but will create a positive impact on the streetscape by replacement of the older, somewhat dilapidated garage structures. The submissions are not supported in this regard.

- **Landscaping design**

Concerns were raised with regard to the landscape design, including in relation to the northern setback area, and width of stairs.

Comment:

The landscape design has been reviewed by Council's Landscape Officer, who is satisfied with the plans, subject to conditions of consent with regard to certain species. The northern side setback will include planting, and the path/stair along the northern side of the property is not unusual in terms of providing access down side setbacks. The path/stair is to generally maintain the existing ground levels, and is not considered to cause any unreasonable privacy impacts given it will not be a high use thoroughfare.

- **Stormwater and overland flow**

Concerns were raised by neighbours to the rear regarding stormwater. Specific concerns were

raised in relation to the proposed absorption system, and requests were made for a pump out system to Woodland Street. A request was also made for an overland flow study to be carried out.

Comment:

Council's Development Engineers have reviewed the stormwater plans and Geotechnical report provided and were not initially satisfied. The plans have been amended to include greater onsite storage, and Council's Engineers are now satisfied that the proposal is in accordance with the Northern Beaches Council's 'Water Management for Development Policy'. The applicants have lodged a statutory declaration stating that they have attempted to contact the rear neighbour to investigate obtaining an easement, but were unsuccessful. Pump out systems are not supported by the Water Management Policy, and as such water is required to drain down hill where it would naturally flow. As such, the proposed system still includes an absorption element, but the onsite storage has been increased to the satisfaction of Council's engineers. Conditions of consent have been included to ensure that stormwater is disposed of in accordance with the plans and the policy. An overland flow study has not been required by Council's Engineers.

- **Social and economic impacts**

Concerns were raised with regard to social and economic impacts of the proposal.

Comment:

As discussed throughout this report the proposal is considered to be reasonable in its context and with respect to the relevant planning controls. As such it is considered to be orderly development of the site, and will not give rise to any significant or unreasonable social or economic impacts.

- **Geotechnical Report, vibrations, development on sloping land**

Concerns were raised that the geotechnical report did not adequately address the proposed development, and more specific concerns were raised with regard to vibrations.

Comment:

The geotechnical report provided references the proposed plans (prior to amendment, however, the amendments are generally minor). It also includes specific recommendations with respect to vibration monitoring, and recommendations for upper limits for vibrations. A condition of consent will ensure that all recommendations of this report are carried out. Additionally, due to the prevalence of rock outcrops across the site and neighbouring sites, conditions are also recommended requiring dilapidation reports on neighbouring property to be carried out pre and post construction. Subject to these conditions, the application is considered acceptable with regard to these concerns.

- **Solar access**

Concerns were raised with regard to shading of the southern neighbour at 62 Woodland Street. Further concerns were raised that this would impact on public health as it would affect the insomnia of the occupants of 62 Woodland Street.

Comment:

Solar access and the impacts on number 62 have been assessed in detail under clause 3.4.1 in this report. In summary, the proposal is considered to maintain reasonable solar access to the neighbouring property. The specific health condition of an individual resident is not a matter for consideration under the Environmental Planning and Assessment Act 1979.

- **Views**

Concerns were raised with regard to view loss from number 62 Woodland Street.

Comment:

View loss has been assessed in detail under clause 3.4.3 in this report. In summary, the proposal is considered to maintain a reasonable sharing of views. In summary, the proposal is considered to maintain a reasonable sharing of views.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the alterations and additions to an existing residential dwelling. Alterations include internal layout changes to providing a more open plan layout, with additions inclusive of lower ground extension and construction of a new pool, with accompanying new landscape works.</p> <p>Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees and Bushland Vegetation • 4.1.5 Open Space and Landscaping <p>A Landscape Plan has been 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 and groundcovers.</p> <p>The Arboricultural Impact Assessment provided with the application has identified a total of fifteen trees located both within the site, as well as in the surrounding properties and road reserve. Of these fifteen trees, seven are located within site boundaries, with the remaining eight trees located outside the project boundary in the road reserve and within the adjoining property to the south and east. All trees located outside the project boundary have been allocated for retention.</p> <p>The Arboricultural Impact Assessment is unclear as to which trees are to be removed or retained, however the Statement of Environmental Effects notes that of the seven existing trees on site, a total of four trees are to be removed with the remaining three retained. On plan, trees proposed for removal are Trees No. 4, 5, 10 and 11. Trees No. 4 and 5 are located on the western boundary at the front of the site. Both of these are exempt as they are below the 5m tree height threshold. Trees No. 10 and 11 are located towards the rear of the property adjacent to the northern boundary, and are located within the proposed works footprint. Both of these trees are also exempt due to</p>

Internal Referral Body	Comments
	<p>height being below 5m or being an exempt species, hence they do not require Council's approval to be removed.</p> <p>On plan, trees proposed to be retained are Trees No. 6, 12 and 13. Tree No. 6 is located at the front of the property adjacent to the existing car ports. Trees No. 12 and 13 are located at the rear of the property adjacent to the eastern boundary. These are both significant in height and provide valuable landscape amenity. As these trees have been allocated for retention, tree protection measures shall be implemented to ensure tree health is maintained throughout the life of the development. The retention of all other existing trees is vital to satisfying controls 3.3.2 as a key objective of the controls is to "protect and enhance the scenic value and character that trees provide", whilst simultaneously softening the bulk of the built form.</p> <p>It is also worth noting that the Landscape Plans propose the use of <i>Rhapiolepis indica</i> 'Oriental pearl' which has been identified as an undesirable species. For this reason a locally native alternative shall be proposed. The completion of the proposed landscape works on the Landscape Plan, including this species change, is vital to satisfying controls 3.3.1 and 4.1.5.</p> <p>The landscape component of the proposal is therefore acceptable subject to the protection of existing trees, and the completion of landscape works as proposed on the Landscape Plans.</p> <p>Revised Comments Following the original comments and referral response given, amended Landscape and Architectural Plans have been provided for the application. These plans have been reviewed and no additional concerns are raised with the proposal. As a result, the original comments and recommended conditions still apply.</p>
NECC (Development Engineering)	<p>The subject site is located on the low side of the street and as such the method of stormwater disposal from the site is to be in accordance with Clause 5.5 of Council's Water Management Policy. The submitted stormwater plan proposes absorption. A review of the Geotechnical report indicates that there is rock located close to the surface of the site and it is considered an absorption system will not be suitable for the site. In this regard the steps outlined in the Water management Policy must be undertaken to provide a suitable design for the disposal of stormwater for the proposal.</p> <p>Development Engineers cannot support the application due to insufficient information to address stormwater disposal in accordance with Manly LEP Clause 6.4.3 and DCP Clause 3.7.</p> <p>Additional Information submitted 9/04/2021</p> <p>In order for Council to consider the proposed level spreader the applicant must demonstrate that an easement cannot be obtained from the downstream property owner. This evidence must be</p>

Internal Referral Body	Comments
	<p>submitted to Council.</p> <p>A review of the revised stormwater plan indicates that the design is not in accordance with Appendix 4 of Council's Water Management Policy. In this regard, the design has not restricted the stormwater flows from the whole site for all storms up to and including the 1 % AEP. As a result the detention storage provided is insufficient. Also the total discharge including bypass flows and controlled flows through the level spreader must not exceed the 20% AEP. It is consider that the level spreader device be amended to a grated drain to ensure flows do not result in the concentration to the downstream property.</p> <p>Development Engineers cannot support the application due to insufficient information to address stormwater disposal in accordance with Manly LEP Clause 6.4.3 and DCP Clause 3.7.</p> <p>Additional information submitted 14/05/2021 and 1/06/2021</p> <p>The amended stormwater plans and statutory declaration satisfy the previous comments subject to conditions.</p> <p>No objection to approval, subject to conditions as recommended.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid stated there would be no impacts to Ausgrid assets with the proposed alterations. No conditions were required.

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. A388012). 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:

Ausgrid stated there would be no impacts to Ausgrid assets with the proposed alterations. No conditions were required.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.73m	N/A	Yes
Floor Space Ratio	FSR: 0.45:1	FSR: 0.35:1	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 822m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings per 500m ²	1 dwelling	N/A	Yes
	Dwelling Size: 112sqm	285.5sqm	N/A	Yes
4.1.2.1 Wall Height	S: 7.7m (based on gradient 1:5)	New works 5.3m	N/A	Yes
	N: 7.35m (based on gradient 1:7)	New works 3.9m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.82m (existing and maintained)	12.8%	Yes
	Pitch: maximum 35 degrees	33 degrees (existing and maintained)	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Existing and maintained (garage 0.2m, and dwelling 7.9m)	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 1.3m (based on wall height) S: 1.76m	New works 1.664m New works 1.7m	N/A 3.5%	Yes No
	Windows: 3m	N 1.5m S 1.2m	50% 60%	No No
4.1.4.4 Rear Setbacks	8m	10.7m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS 3	Open space 55% of site area	69.2% (569sqm)	N/A	Yes
	Open space above ground 25% of total open space	25% (143sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	38.4% (218.5sqm)	N/A	Yes
	3 native trees	>3 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.1m (Frontage 15.24m wide)	N/A	Yes

4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	4.7m	470%	No
	1m curtilage/1.5m water side/rear setback	1.664m minimum setback	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	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
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The control states the following:

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

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

The shadow diagrams submitted indicate that the proposal will overshadow the north facing and east facing living room windows on the lower level more than is currently the case. These windows are currently almost entirely unshaded at 9am on June 21, and fully shaded by 12pm. The proposal will result in the north facing window being shaded at 9am, but receiving varying levels of direct sunlight at 10am and 11am. The east facing window (which is also a door) will be partially shaded at 9am and 10am, and will be only marginally affected by the proposal at 11am.

As such, the proposal is non-compliant with the requirement above to maintain the present level of solar access to windows or glazed doors to living rooms for a period of 2 hours.

Merit consideration:

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

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

Comment:

The living room window and glazed door in question are located on the lower level of the adjacent dwelling, and are therefore quite vulnerable to overshadowing by development of the neighbouring property. To strictly comply with the above requirement to completely maintain the present level of solar access would require a southern setback significantly larger than the minimum requirements, and height of development significantly lower than maximum requirements. The proposed rear extension is well below the 8.5m height limit applicable to the site. A part of the rear extension is assessed to be marginally non-compliant with the side setback control (by 6cm as discussed under clause 4.1.4 in this report) being setback a minimum of 1.7m from the southern boundary, but increasing to 2.412m. The 'flying beam' structure is setback between 2.45m and 6.8m from the southern side boundary.

Despite the shading being greater than required by the control above, it is noted that the northern window will still be in partial direct sunlight for almost 2 hours on June 21, and the east facing door will still be in partial direct sunlight for at 9am, 10am and 11am, albeit reduced from the existing situation.

The applicant has provided further diagrams for March 21 and September 21 indicating at those times of the year the northern window will be unshaded by the proposal between 9am and 3pm, and the east facing door will be self shaded only.

Given the vulnerability of the lower level living room windows, and given the considerations above, the proposal is considered to maintain equitable access to light and sunshine. The living room in the north eastern corner of the lower level of the southern neighbour will still receive a significant amount of sunlight through both the north and east facing glazing in mid winter, and the proposal is generally compliant with the relevant built form controls, with only a very minor non-compliance. The proposal is considered to achieve this objective.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposal maintains solar access to the private open space of the southern neighbour in accordance with the requirements of the control. The solar access to the internal living areas has been discussed in detail above. In summary, the internal living room will still receive significant solar access in the morning hours in mid winter, and will be completely unshaded by the development at the Spring and Autumn equinoxes. The shadow diagrams also indicate that the clothes line of the neighbouring property will receive a minimum 6 hours of sunlight as required by the control.

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

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

Comment:

As discussed under clause 4.1.4 in this report, the proposal includes a minor non-compliance of 6cm to the southern side setback control (though the applicant believes this setback actually complies with the control). This non-compliance occurs on the most southerly part of the wall of the new lower level master bedroom. This wall increases in setback to the west where the extension adjoins the existing dwelling on site, being setback 2.412m. As discussed above, the proposal generally maintains a significant level of solar access to the living room windows of the neighbour to the south, which are considered vulnerable to overshadowing being located on the ground level. Given the considerations above, the proposed level of modulation and setbacks of the southern side of the additions is considered acceptable, and the proposal is considered to reasonably maximise penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas.

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

3.4.2 Privacy and Security

Overall, the proposal will maintain a reasonable level of privacy to adjoining neighbours. The upper level rear deck is set well back from both side boundaries, and the rear boundary, and is surrounded by a planter box on all sides that will limit any overlooking towards neighbours. The pool deck area is provided with screening walls on each side, and there is no trafficable area proposed around the side and rear edges of the raised pool structure. The northern wall adjacent to the deck includes a door shaped arch. However, the deck is located well below the dwelling of the northern neighbour, and generally well below the primary private open space area of the northern neighbour also.

The existing side facing windows on the upper level are generally maintained, although the existing north facing kitchen window is to be reduced in size, and the two existing northern highlight windows are to have their sills lowered to 1m above floor level (WD. 03, 04 and 05). The neighbour to the north has objected to these windows. The applicants have made the following statement:

The existing highlight windows at the northern elevation will be a similar width of 614mm (i.e., not widened) with a lowered sill height to one metre. The windows will continue to be in the living area, in the same locations as existing (see Photograph 1). The existing north-facing picture window, which faces the neighbour's screening hedge would be substantially reduced to accommodate the kitchen. This is considered to enhance the neighbour's privacy (see Photograph 2).

On the neighbouring dwelling, the existing windows facing the subject site are highlight windows, the neighbour's rear deck has privacy screening, and the garden has a hedge as noted (see Photograph 3 on the following page). Therefore, lowering the sill height is unlikely to affect the neighbours' living room windows. Additionally, the proposal's living room window locations are offset from the neighbours, and do not have direct sightlines to living areas. However, if Council has concerns, fixed lower sashes with external screening or obscured glazing to the lower sash could achieve the same result as the 1.7m high sills requested.

A site inspection did not identify the changes to these windows as causing any significant privacy impacts. However, they are within the 3m minimum control for windows under the side setback control, and given the comments above, a condition is recommended requiring the fixed lower sashes with external screening or obscured glazing to the lower sash suggested above.

The extended lower level includes three new south facing windows from the bedroom / ensuite, and two new north facing doors from the living area. The south facing windows are from a low use room, and will be screened by planting both on the subject site and existing planting on the neighbouring site. They are however higher than the lower living and level and private open space of the southern neighbour, and as such, a condition is recommended to make the glazing of these windows opaque, to prevent any overlooking opportunities.

The north facing doors (DR.07 and DR.08) are located at ground level, and generally below the level of the neighbouring property to the north. They are not considered to cause unreasonable privacy impacts.

Overall, the proposal is generally well designed to avoid any unreasonable privacy concerns in the context of the site and surrounding neighbours. The proposal is considered satisfactory, subject to conditions as discussed above.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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

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

Comment:

One submission was received in relation to views from the adjacent southern neighbour. The views affected by the proposal are long distance district views of Fairlight, centred around a tall residential flat building at the top of the hill on Hilltop Crescent (10 Hilltop Crescent), and the surrounding district. The views are somewhat obscured by existing trees. The views are not a 'whole view' given they are already partially obstructed. The views are considered to be of relatively low value in the context of these principles.

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

Comment:

The view is obtained across the side boundary with the subject site. The view from the lower level living area is significantly more obscured due to height and existing vegetation than from the upper level bedrooms.

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

Comment:

The view from the living area is likely to be lost, given this view is already mostly obscured by existing

vegetation. From the upper level bedrooms, the views of the top of the hill will be retained, while the district views lower down the hill will be lost. The view loss from the whole of the property is considered to be minor to moderate given the nature and extent of the existing views through the trees.

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

Comment:

The proposal generally complies with the relevant built form controls, with minor exceptions as discussed within this report. These exceptions (height of pool, and very minor side setback variation) would not retain any significant amount of extra views if the proposal complied in full. The views from the main living level are highly vulnerable noting they are across a side boundary, from the lower level, and already significantly obscured by existing vegetation. The views from the upper level will be retained to a reasonable degree. Given the nature of the views affected, and extent of impact, combined with the general level of compliance with the relevant built form controls, requiring the applicant to redesign to retain more of the view is not recommended. The proposal will maintain a reasonable sharing of views in accordance with these principles.

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

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

Description of non-compliance

The proposal will replace the existing garages on site with a single new garage, located on the same nil front and side setbacks as the existing garages. The proposal also fails to comply with the minimum 3m side setback for windows (having windows located 1.5m from the northern side boundary, and 1.2m from the southern side boundary). A very minor non-compliance is also proposed to the south side setback requirement for the new rear addition of approximately 6cm (1.76m setback based on a requirement of 1.7m).

Merit consideration:

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

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

Comment:

The proposal will replace the existing two attached garages (that appear to have been constructed at different times), with a single double garage, in the same location, on a nil setback to the front and side

boundary, and adjacent to the neighbouring garage to the south, also on a nil setback to front and side. In terms of impacts on the streetscape, the proposal will have little impact in this regard, and will likely improve the visual impacts caused by the site, by the replacement of the old attached two garages with a single, more modern, structure.

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:

Concerns have been raised by the southern neighbour in relation to solar access and view loss caused by the rear addition. The applicant states that the amended plans comply in full with the side setback control. However, the assessment judges them to cause a very minor non-compliance of approximately 6cm, on the southern side of the proposed master bedroom. The setback of this wall is varied, being in part 1.7m, and increasing up to 2.412m from the southern boundary. The impacts of the new additions on both solar access and views are assessed in detail under the relevant clauses in this report. In summary, the proposal is considered to be reasonable in its context with regard to views and solar access.

Concerns were also raised with regard to privacy, which has also been addressed in detail under the relevant clause in this report. In summary, the proposal is not considered to result in any unreasonable privacy impacts.

The proposal is considered to be generally consistent with the matters listed under this objective.

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

Comment:

The proposal is generally compliant with the relevant built form controls, with only very minor non-compliances, or maintaining existing non-compliances as discussed above. Further amendment to the plans is not considered necessary.

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 complies with the landscaped area requirements of the DCP. Significant vegetation and deep soil zones will be retained, and further planting is proposed. The proposal is consistent with this objective.

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

Comment:

N/A

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9.1 of the MDCP 2013 states that

Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:

- i) would not detract from the amenity or character of the neighbourhood; and*
- ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.*

The pool structure includes a wet edge and planter box to the eastern (down hill) side, which protrudes out over the edge of a rock outcrop, meaning it is up to 4.7m above the ground level below the overhang. The applicant has argued that the planter structure is not 'pool' and should not therefore be calculated as being non-compliant with the pool height control. They have also argued that the actual pool water is up to 1.6m above the existing ground level, and is setback 1.6m from the boundaries in accordance with the control above. However, extrapolating from the survey marks, the pool is up to 3.5m above ground level at the rear as the land falls steeply away. As such, an assessment against the objectives is carried out below.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying objectives of the control as follows:

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

The swimming pool complies with the side and rear setback requirements for swimming pools. The proposed wet edge and landscape treatment located around the eastern curtilage of the pool (which is the highest point above ground due to overhanging the rock outcrops) is non-trafficable, and will provide a visual buffer between the pool and neighbouring properties to the rear. Screening walls are located to the north and south of the pool deck. The pool plant has been proposed below the deck adjacent to the pool to the west, and a suitable condition has been recommended limiting the noise of

sound producing plant to no more than 5dB (A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.

Comment:

The pool is proposed in the rear of the site, and will not impact on the streetscape. The proposal is for residential alterations and additions, and will generally maintain compliant levels of landscaped area and open space area. The non-compliant height of the pool will not prevent significant planting being maintained on site, and does not cause the site to be out of character with the residential nature of the locality. The non-compliance occurs partly as a result of the topography of the site. The pool could be excavated into the site to comply with the control, but this would cause far more damage to the rock outcrops in the rear yard area, whereas the current design enables the pool to generally sit on and above these natural features and generally maintain them.

Objective 3) To integrate landscaping

Comment:

Adequate landscaping is incorporated into the development. As mentioned above, the proposal complies with the relevant minimum controls. The highest point of the overall pool structure is made up of a proposed planter box, to be planted with vegetation. The applicant has stated that this element could be removed if necessary. However, it is not considered that this element creates any significant or unreasonable impacts to the surrounding area, and the proposal is supported in this regard.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The site is not bushfire prone.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$14,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,400,000.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/1380 for Alterations and additions to dwelling house on land at Lot 5 DP 9928, 64 Woodland Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By

DA0004 Revision B	29.01.21	Mono-Gram
DA0005 Revision B	29.01.21	Mono-Gram
DA1000 Revision B	29.01.21	Mono-Gram
DA1001 Revision B	29.01.21	Mono-Gram
DA1002 Revision B	29.01.21	Mono-Gram
DA2000 Revision B	29.01.21	Mono-Gram
DA2001 Revision B	29.01.21	Mono-Gram
DA2002 Revision B	29.01.21	Mono-Gram
DA2003 Revision B	29.01.21	Mono-Gram
DA2004 Revision B	29.01.21	Mono-Gram
DA3001 Revision B	29.01.21	Mono-Gram
DA3002 Revision B	29.01.21	Mono-Gram
DA6000 Revision B	29.01.21	Mono-Gram
DA7000 Revision B	29.01.21	Mono-Gram

Engineering Plans		
Drawing No.	Dated	Prepared By
20-048 D1 and D2 Revision C	11/05/2021	Soliman Hanna & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report Ref: 33359SFprt	11 August 2020	JK Geotechnics
BASIX Certificate A388012	14 Septeber 2020	Victor Lin & Associates
Arborist Report Job No: 5575	17 August 2020	Monaco Designs

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LP00-D5320 Issue 01 Revision D	12.03.2021	Dangar Barin Smith
LP01-D5320 Issue 01 Revision D	12.03.2021	Dangar Barin Smith
LP02-D5320 Issue 01 Revision D	12.03.2021	Dangar Barin Smith
LP03-D5320 Issue 01 Revision D	12.03.2021	Dangar Barin Smith

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	01-August 2018	Mono-Gram

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 (Demolition):**

- (a) 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 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
 - (ii) 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.

- (b) 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.

- (c) 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.

Reason: Legislative Requirement.

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 (Demolition):**

- (a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) 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.

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

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$14,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,400,000.00.

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

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

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

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

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

7. **Security Bond**

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

8. **On slab landscape works**

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

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of

the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

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

- i) 300mm for lawn
- ii) 600mm for shrubs

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

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

9. **Amendments to the approved plans**

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

- o Windows WD.06, WD.07 and WD.08 (south facing from master bed and ensuite) are to be opaque glazed.
- o Windows WD.03, WD. 04 and WD.05 (north facing from upper level kitchen + dining) are to have fixed lower sashes with external screening or obscured glazing to the lower sash.

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. **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.

11. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention and a level spreader in accordance with Northern Beaches Council's Water Management Policy, and generally in accordance with the concept drainage plans prepared by Soliman Hanna & Associates, drawing number 20-048 D1 and D2 Revision C, dated 11/05/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The grated drain 'level spreader' is to be connected to the silt arrestor pit and include weep holes at the base to ensure it drains into the subsoil and during storm events the discharge is evenly dispersed along a level contour.
2. An inspection outlet is to be provided in the outlet pipe adjacent to the orifice plate for future inspection and maintenance.
3. The surface inlet pits placed upstream of the detention tanks are to be positioned to collect surface flows and connect them directly to the OSD tanks with no surcharge.

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. **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.

14. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**15. 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: 62 Woodland Street and 66 Woodland Street.

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.

16. 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

17. **Road Reserve**

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

Reason: Public safety.

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

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

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

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

19. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

20. **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.

21. **Protection of existing street trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum the tree protection fencing for the street tree fronting the development site shall consist of standard 2.4m panel length to four sides, located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: tree protection.

22. Tree and vegetation protection

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work

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

The Certifying Authority must ensure that:

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

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

Reason: tree and vegetation protection.

23. **Protection of rock and sites of significance**

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

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

Reason: preservation of significant environmental features.

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

24. **Landscape completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

i) Substitute the proposed *Rhapiolepis indica* 'Oriental Pearl' with a locally native alternative as it is an undesired plant species. Suggested alternatives include: *Banksia spinulosa*, *Grevillea sericea*, *Pimelia linifolia* or *Ricinocarpus pinifolius*.

Native shrubs planting species shall be selected from Council's list, specifically *Native Plant Species Guide - Manly Ward*: <https://www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide>

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: environmental amenity.

25. **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.

26. **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:

- o Compare the post-construction report with the pre-construction report,
- o Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- o 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.

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

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall 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 disposal 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.

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

28. **Landscape maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and 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.



Rev	Description	Date	Initial	Project	Drawing title
A	DEVELOPMENT APPLICATION	09.04.20	NT	KORBEL RESIDENCE 64 Woodland Street, BALGOWLAH HEIGHTS NSW 2093 Alterations and Addition	SITE ANALYSIS Drawing number DA 0003
B	DEVELOPMENT APPLICATION	29.01.21	NT		
					Revision Scale B 1:200@A3 Drawn Checked Status



Legend	Rev Description	Date	Initial
A DEVELOPMENT APPLICATION B DEVELOPMENT APPLICATION		09.04.20 29.01.21	NT NT

KORBEL RESIDENCE

64 Woodland Street,
BALGOWLAH HEIGHTS NSW 2093

Alterations and Addition

LOWER GROUND FLOOR

Drawing number
DA 1000

Revision:
B

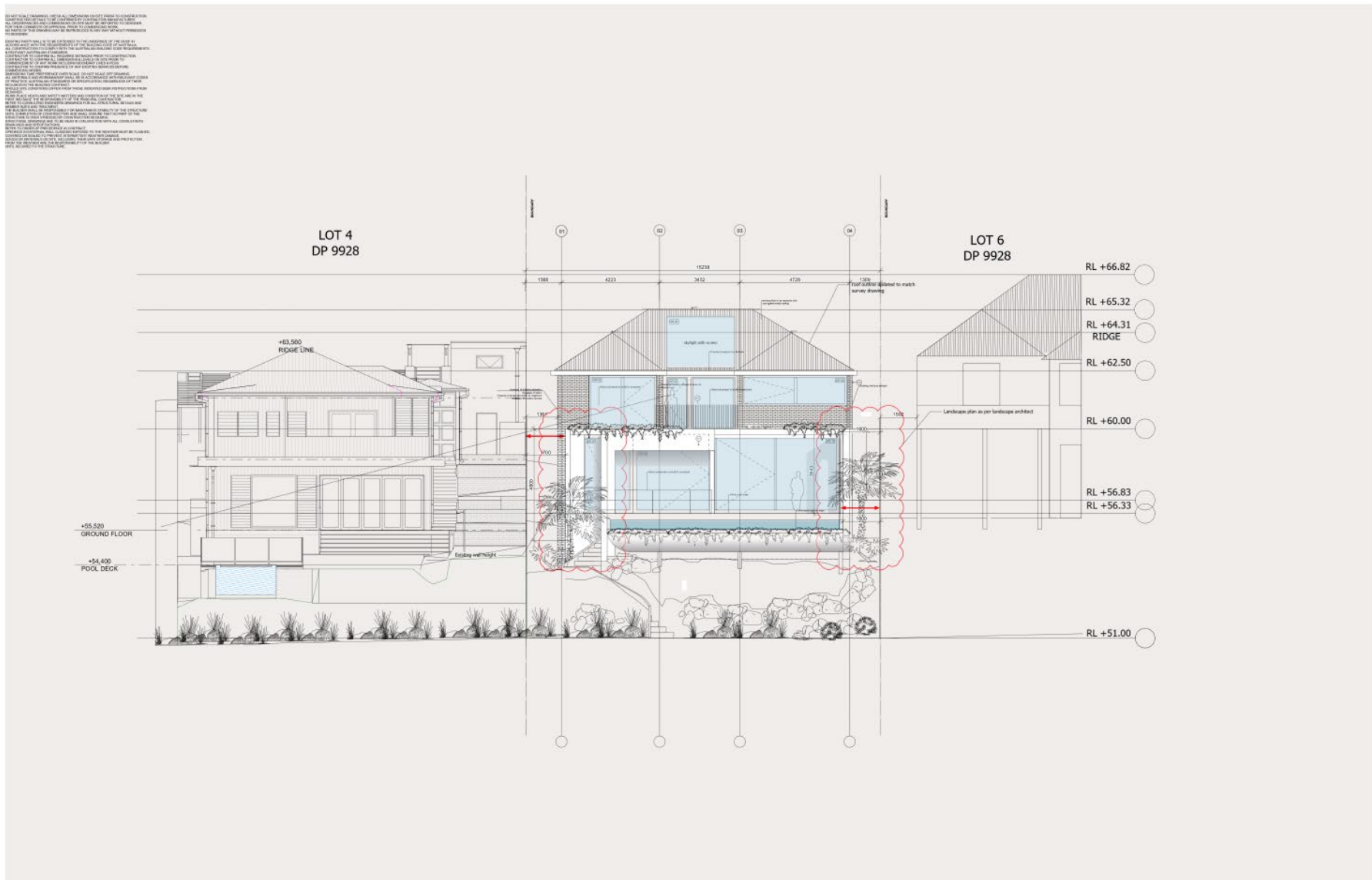
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Legend	Rev Description	Date	Initial	Project	Drawing title
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64 Woodson Street, BALGOWLAH HEIGHTS NSW 2093 Alterations and Addition		29.01.21	NT		Drawing number DA 1002
					Revision B Scale 1:200@A3
					Drawn Checked Status



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Gram**

Legend

- 1. Main building
- 2. Pool deck
- 3. Landscaping
- 4. Fencing
- 5. Driveway
- 6. Carport
- 7. Garage
- 8. Screened porch
- 9. Veranda
- 10. Deck
- 11. Stairs
- 12. Retaining wall
- 13. Boundary
- 14. Easement
- 15. Other

Rev Description

Rev	Description	Date	Initial
A	DEVELOPMENT APPLICATION	09.04.20	NT
B	DEVELOPMENT APPLICATION	29.01.21	NT

Date

Initial

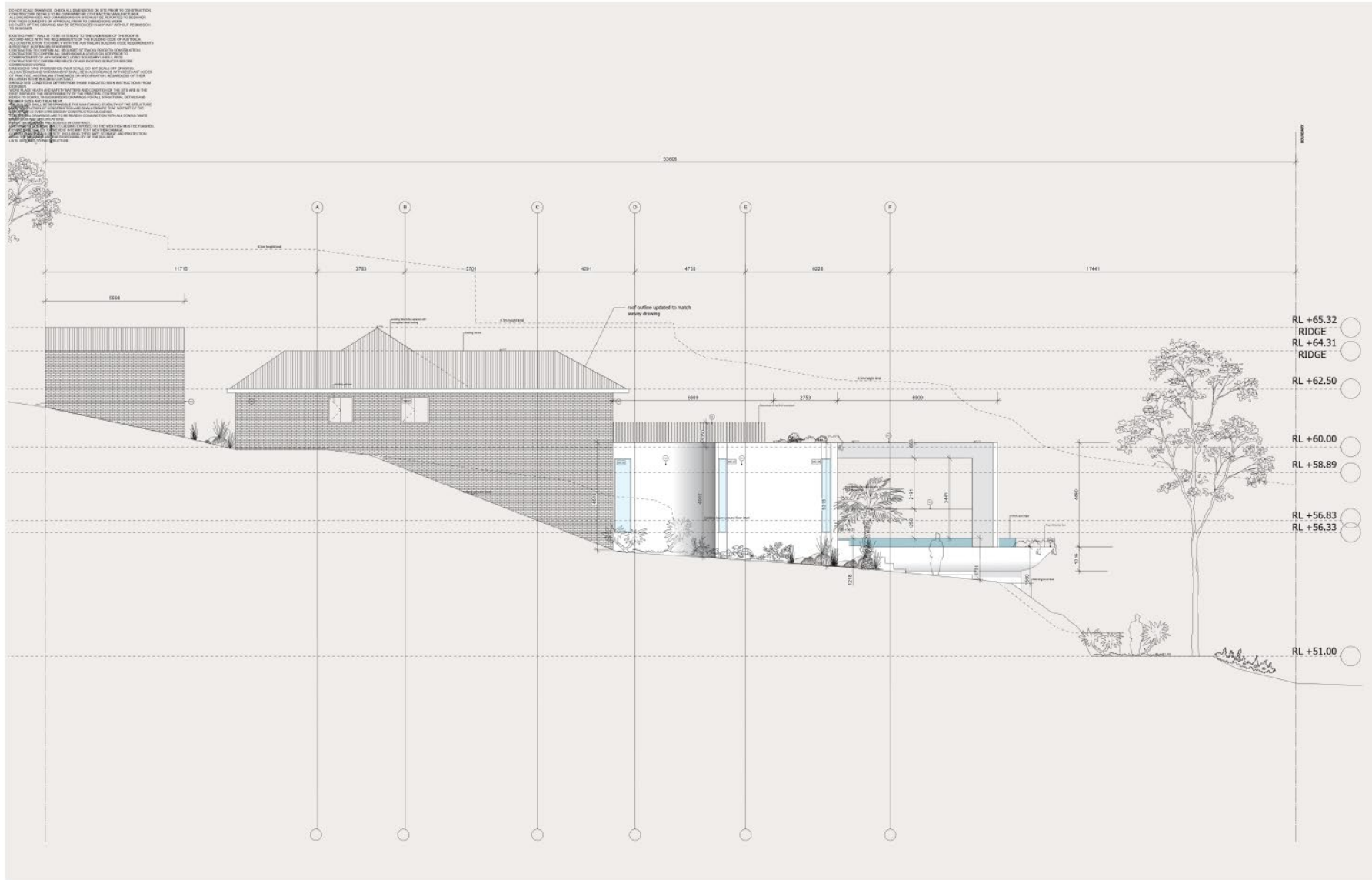
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KORBEL RESIDENCE
64 Woodland Street,
BALGOWLAH HEIGHTS NSW 2093
Alterations and Addition

Drawing title

EAST ELEVATION

Drawing number	Revision	Scale
DA 2000	B	1:200@A3
Drawn	Checked	Status



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Legend

1. Site Plan	11. Landscape
2. Floor Plan	12. Section
3. Elevation	13. Detail
4. Section	14. Detail
5. Detail	15. Detail
6. Detail	16. Detail
7. Detail	17. Detail
8. Detail	18. Detail
9. Detail	19. Detail
10. Detail	20. Detail

Rev Description

Rev	Description	Date	Initial
A	DEVELOPMENT APPLICATION	09.04.20	NT
B	DEVELOPMENT APPLICATION	29.01.21	NT

Date

Initial

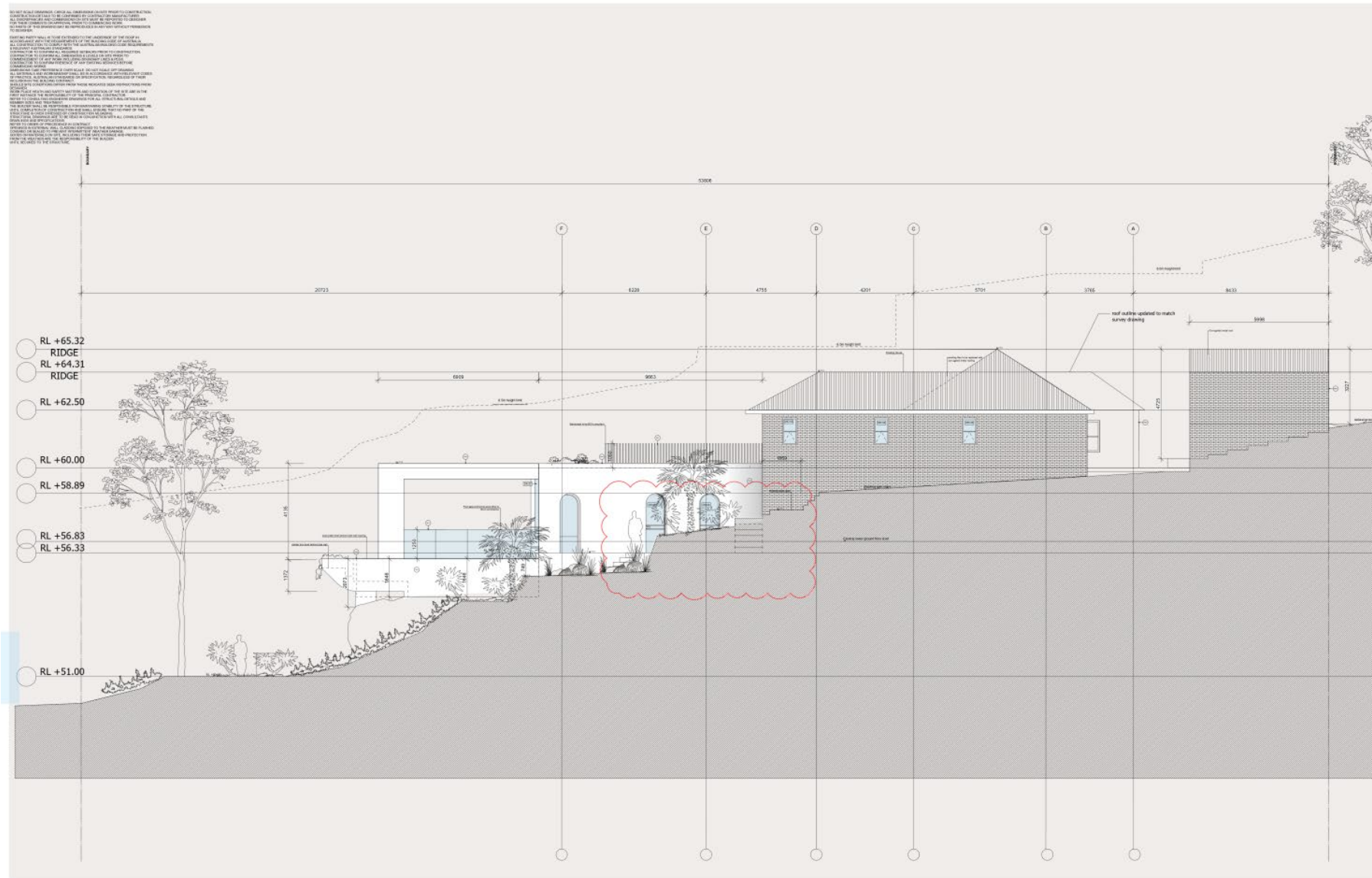
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KORBEL RESIDENCE
64 Woodland Street,
BALGOVLAH HEIGHTS NSW 2093
Alterations and Addition

Drawing title

SOUTH ELEVATION

Drawing number	Revision	Scale
DA 2001	B	1:200@A3
Drawn	Checked	Status



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Legend	
1. Proposed Building	
2. Proposed Fencing	
3. Proposed Driveway	
4. Proposed Pathway	
5. Proposed Garden Bed	
6. Proposed Planting	
7. Proposed Retaining Wall	
8. Proposed Stormwater Drain	
9. Proposed Boundary	
10. Proposed Easement	
11. Proposed Access	
12. Proposed Structure	
13. Proposed Feature	
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16. Proposed Component	
17. Proposed Part	
18. Proposed Section	
19. Proposed Detail	
20. Proposed Element	

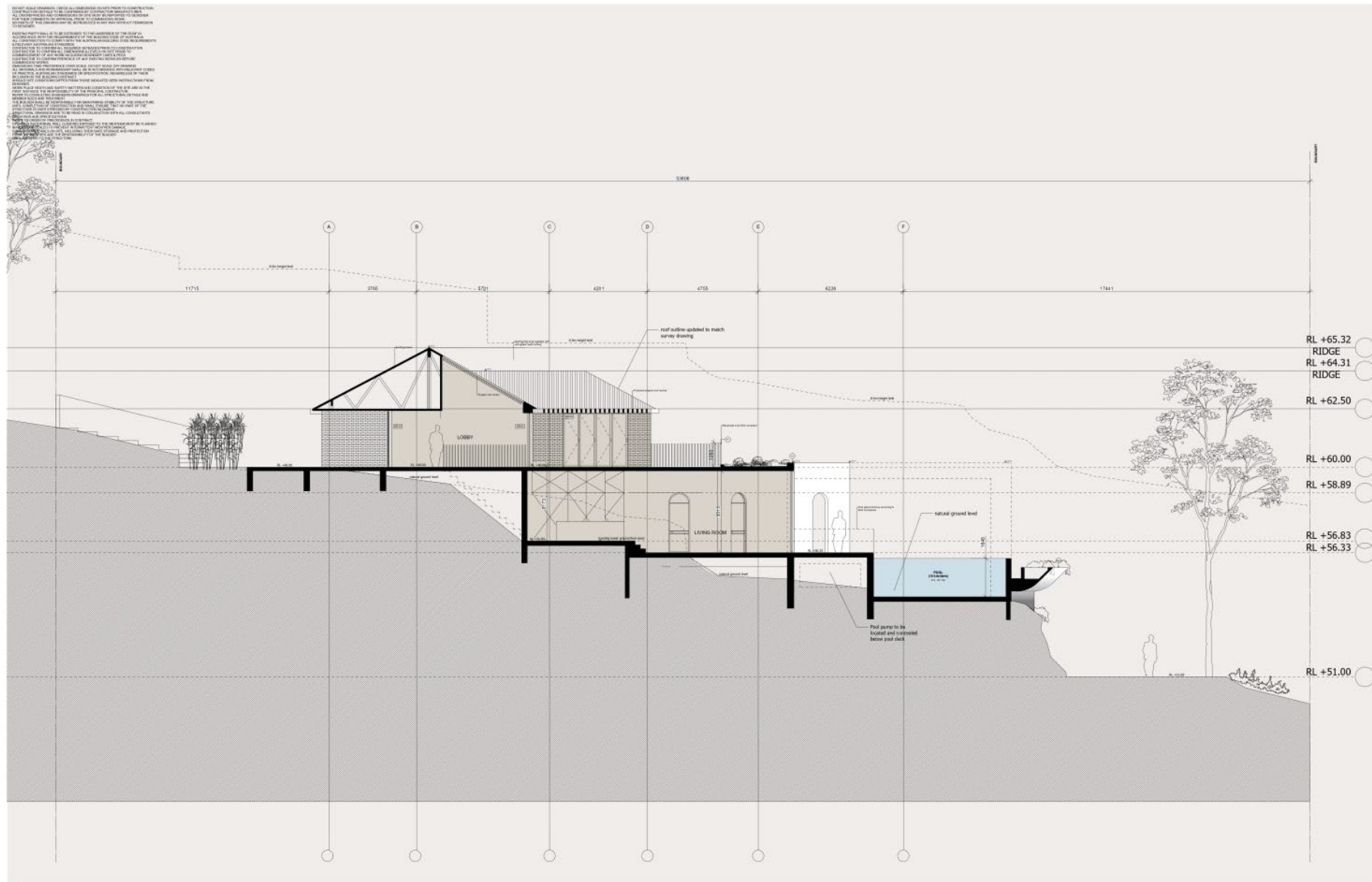
Rev	Description	Date	Initial
A	DEVELOPMENT APPLICATION	09.04.20	NT
B	DEVELOPMENT APPLICATION	29.01.21	NT

Project
KORBEL RESIDENCE
64 Woodland Street,
BALGOWLAH HEIGHTS NSW 2093
Alterations and Addition

Drawing title	
NORTH ELEVATION	
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DA 2002	B
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Rev Description Date Initial

A	DEVELOPMENT APPLICATION	09.04.20	NT
B	DEVELOPMENT APPLICATION	29.01.21	NT

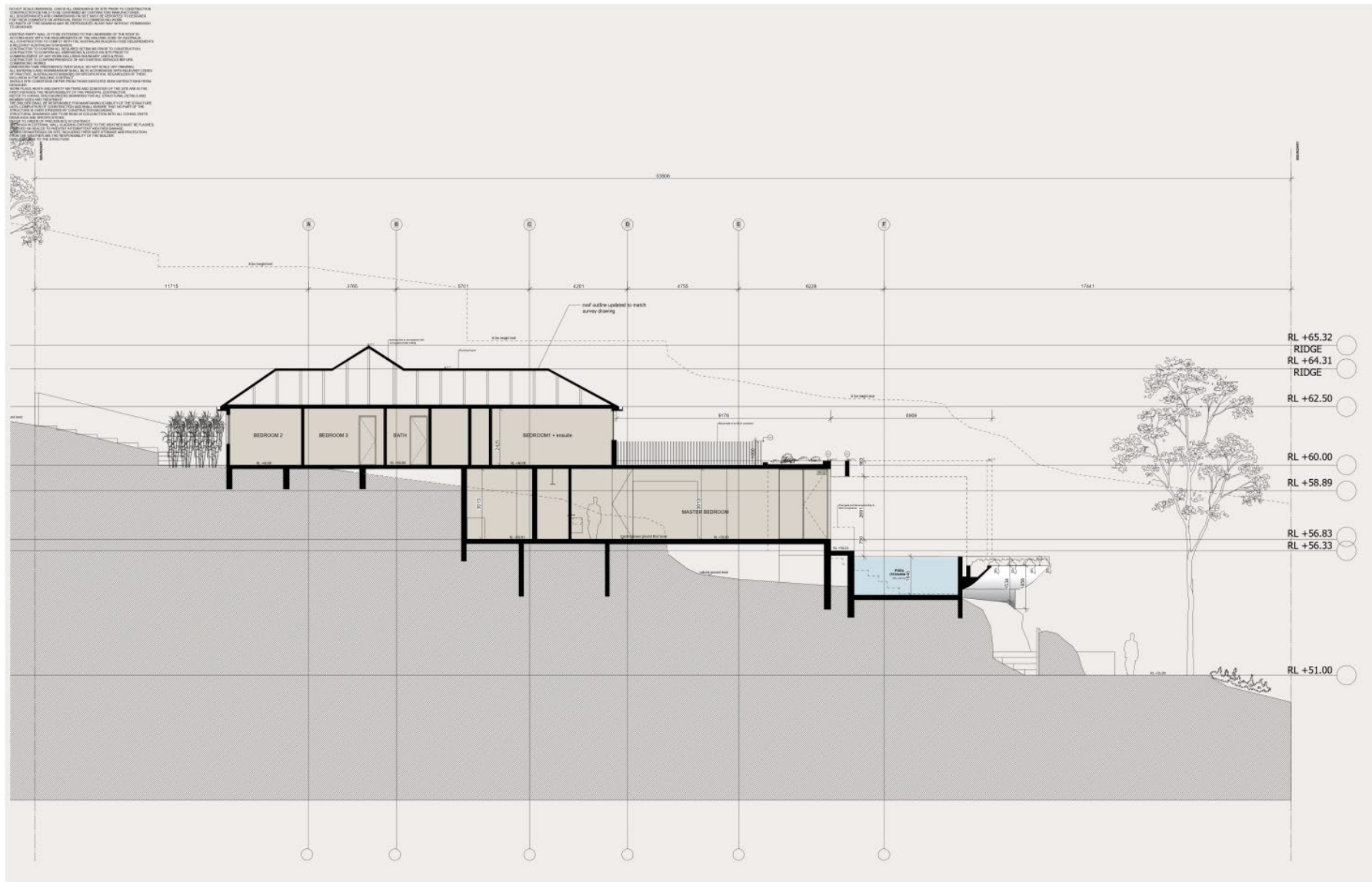
Project

KORBEL RESIDENCE
64 Woodland Street,
BALGOWLAH HEIGHTS NSW 2093
Alterations and Addition

Drawing title

LONG SECTION 01

Drawing number	Revision	Scale
DA 3000	B	1:200@A3
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Legend

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Rev Description Date Initial

A	DEVELOPMENT APPLICATION	05.04.20	NT
B	DEVELOPMENT APPLICATION	29.01.21	NT

Project

KORBEL RESIDENCE
64 Woodland Street,
BALGOOLAH HEIGHTS NSW 2093
Alterations and Addition

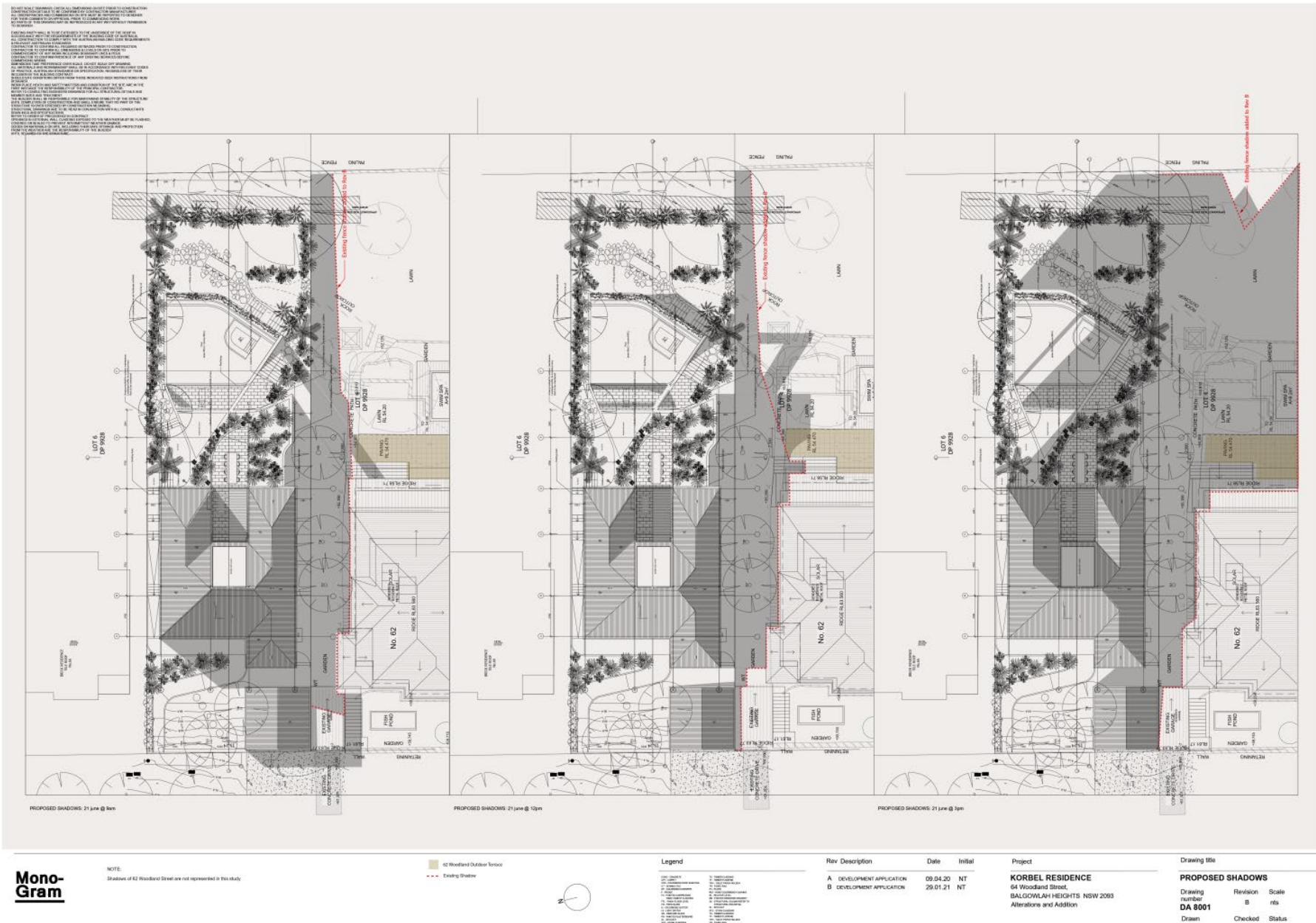
Drawing title

LONG SECTION 02

Drawing number	Revision	Scale
DA 3001	B	1:200@A3
Drawn	Checked	Status



Legend	Rev	Description	Date	Initial	Project	Drawing title
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<div><div>1. 100% (100%)</div><div>2. 100% (100%)</div><div>3. 100% (100%)</div><div>4. 100% (100%)</div><div>5. 100% (100%)</div><div>6. 100% (100%)</div><div>7. 100% (100%)</div><div>8. 100% (100%)</div><div>9. 100% (100%)</div><div>10. 100% (100%)</div><div>11. 100% (100%)</div><div>12. 100% (100%)</div><div>13. 100% (100%)</div><div>14. 100% (100%)</div><div>15. 100% (100%)</div><div>16. 100% (100%)</div><div>17. 100% (100%)</div><div>18. 100% (100%)</div><div>19. 100% (100%)</div><div>20. 100% (100%)</div><div>21. 100% (100%)</div><div>22. 100% (100%)</div><div>23. 100% (100%)</div><div>24. 100% (100%)</div><div>25. 100% (100%)</div><div>26. 100% (100%)</div><div>27. 100% (100%)</div><div>28. 100% (100%)</div><div>29. 100% (100%)</div><div>30. 100% (100%)</div><div>31. 100% (100%)</div><div>32. 100% (100%)</div><div>33. 100% (100%)</div><div>34. 100% (100%)</div><div>35. 100% (100%)</div><div>36. 100% (100%)</div><div>37. 100% (100%)</div><div>38. 100% (100%)</div><div>39. 100% (100%)</div><div>40. 100% (100%)</div><div>41. 100% (100%)</div><div>42. 100% (100%)</div><div>43. 100% (100%)</div><div>44. 100% (100%)</div><div>45. 100% (100%)</div><div>46. 100% (100%)</div><div>47. 100% (100%)</div><div>48. 100% (100%)</div><div>49. 100% (100%)</div><div>50. 100% (100%)</div><div>51. 100% (100%)</div><div>52. 100% (100%)</div><div>53. 100% (100%)</div><div>54. 100% (100%)</div><div>55. 100% (100%)</div><div>56. 100% (100%)</div><div>57. 100% (100%)</div><div>58. 100% (100%)</div><div>59. 100% (100%)</div><div>60. 100% (100%)</div><div>61. 100% (100%)</div><div>62. 100% (100%)</div><div>63. 100% (100%)</div><div>64. 100% (100%)</div><div>65. 100% (100%)</div><div>66. 100% (100%)</div><div>67. 100% (100%)</div><div>68. 100% (100%)</div><div>69. 100% (100%)</div><div>70. 100% (100%)</div><div>71. 100% (100%)</div><div>72. 100% (100%)</div><div>73. 100% (100%)</div><div>74. 100% (100%)</div><div>75. 100% (100%)</div><div>76. 100% (100%)</div><div>77. 100% (100%)</div><div>78. 100% (100%)</div><div>79. 100% (100%)</div><div>80. 100% (100%)</div><div>81. 100% (100%)</div><div>82. 100% (100%)</div><div>83. 100% (100%)</div><div>84. 100% (100%)</div><div>85. 100% (100%)</div><div>86. 100% (100%)</div><div>87. 100% (100%)</div><div>88. 100% (100%)</div><div>89. 100% (100%)</div><div>90. 100% (100%)</div><div>91. 100% (100%)</div><div>92. 100% (100%)</div><div>93. 100% (100%)</div><div>94. 100% (100%)</div><div>95. 100% (100%)</div><div>96. 100% (100%)</div><div>97. 100% (100%)</div><div>98. 100% (100%)</div><div>99. 100% (100%)</div><div>100. 100% (100%)</div></div>	B	DEVELOPMENT APPLICATION	29.01.21	NT		Drawing number DA 3002
						Drawn _____ Checked _____ Status _____







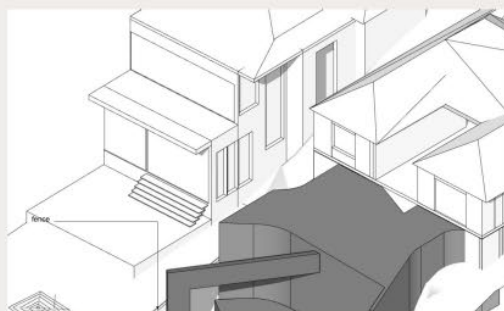


— EXISTING SHADOWS.

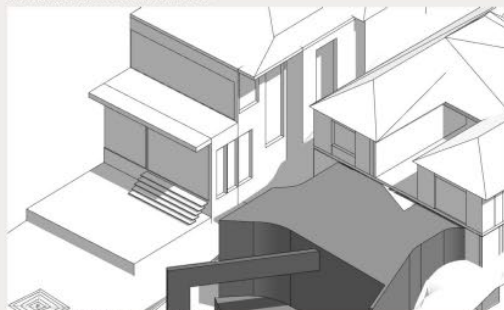
Project
KORBEL RESIDENCE
64 Woodland Street,
BALGOWLAH HEIGHTS NSW 2093
Alterations and Addition

Drawing title		
SHADOW STUDY		
Drawing number	Revision	Scale
DA 8004	B	nts
Drawn	Checked	Status

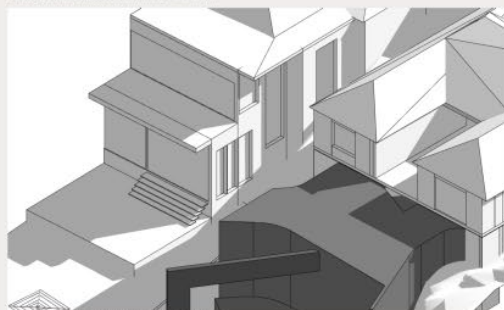
A shadow analysis has been provided in the SEE with additional time between 8am and 11am-11:42am, time when the shadow overcast the eastern facade of 62 woodland street.



Shadowing impact of proposed development: 21 march / Ram



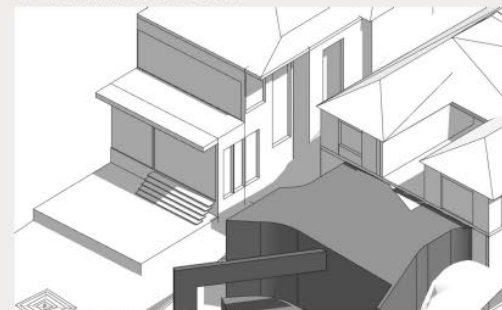
Shadowing impact of proposed development: 21 March / 12pm



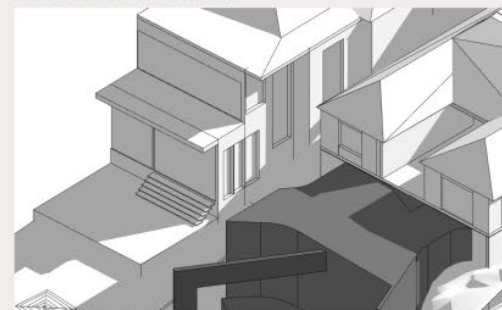
Shadowing impact of proposed development: 21 March / 3pm



Shadowing impact of proposed development: 21 September / 9am



Shadowing impact of proposed development 21 September / 12p



Shadowing impact of proposed development. 21 September / 3pm



- Overshadowing of the clothline
- Clothline receiving direct sun for more than half of the space

Rev	Description	Date	Initials
A	DEVELOPMENT APPLICATION	09.04.20	NT
B	DEVELOPMENT APPLICATION	29.01.21	NT

Drawing title		
SHADOW STUDY / CLOTHLINE		
Drawing number	Revision	Scale
DA 8006	B	nts
Drawn	Checked	Status

ITEM 3.4**DA2021/0617 - 37 RADIO AVENUE, BALGOWLAH HEIGHTS -
DEMOLITION WORKS AND CONSTRUCTION OF A NEW
DWELLING AND SWIMMING POOL**

REPORTING MANAGER	Anna Williams
TRIM FILE REF	2021/431326
ATTACHMENTS	1 Assessment Report 2 Working Plans 3 Report - Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council, as the consent authority, **approves** Development Consent to DA2021/0617 for Demolition works and Construction of a new dwelling and swimming pool on land at Lot 14 DP 13468, 37 Radio Avenue, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0617
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 14 DP 13468, 37 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and Construction of a new dwelling and swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Philip James Holmewood Bridget Jane Holmewood
Applicant:	Bridget Jane Holmewood
Application Lodged:	21/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/06/2021 to 15/06/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 11.4%
Recommendation:	Approval
Estimated Cost of Works:	\$ 920,000.00

EXECUTIVE SUMMARY

The application seeks consent for demolition works and construction of a 3 storey dwelling house and swimming pool.

The application is referred to the Development Determination Panel as the proposal has a variation to the Floor Space Ratio development standard of more than 10%. In this regard the variation is 11.4%.

Public exhibition of the development resulted in no (0) objections to the proposal.

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.

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

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for demolition works and construction of a two storey dwelling house and swimming pool.

RE-NOTIFICATION

The application was re-notified to adjoining properties on 27 May 2021, due to a error in the original description of works. The original notification on 24 May 2021 described the proposal as being for alterations and additions to a dwelling house. The second notification rectifies the error by re-notifying the application as *"Demolition works and Construction of a new dwelling and swimming pool"*.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 14 DP 13468 , 37 Radio Avenue BALGOWLAH HEIGHTS NSW 2093
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Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Radio Avenue.</p> <p>The site is regular in shape with a frontage of 14.235m along Radio Avenue and a depth of 35.280m. The site has a surveyed area of 505.4m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site slopes from the rear to the front eastern property boundary approximately 3.3m.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential dwelling house typically single and multi storey dwelling houses.</p>
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Map:



SITE HISTORY

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

DA20201/0191- Alterations and additions to a dwelling house including swimming pool

The above application was withdrawn by the applicant on 26 March 2021, after Council raised concern with the application being lodged as alterations and additions to a existing dwelling rather than construction of a new dwelling house based on the extent of demolition and new works proposed.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition</p>

Section 4.15 Matters for Consideration'	Comments
	of 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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 01/06/2021 to 15/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is indicated to be for alterations and additions to an existing dwelling and construction of a pool.

Internal Referral Body	Comments
	<p>Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls:</p> <p>I 3.3.1 Landscaping Design I 3.3.2 Preservation of Trees or Bushland Vegetation I 4.1.5 Open Space and Landscaping</p> <p>The Arborist's Report submitted with the application is noted.</p> <p>The Report indicates that one exempt tree species is to be removed to accommodate the proposed works. One street tree is potentially impacted by the proposed driveway crossover widening, however, based on existing site conditions and impacts, the Report concludes that the works can be undertaken with acceptable level of impact on the tree, subject to Arboricultural supervision.</p> <p>As indicated in the Arborist's Report, the site currently contains no trees. Tree planting conditions have been included in accordance with MDCP Cl. 4.5.5.2 Landscaped Area - c) Minimum Tree Planting, 3 trees being required.</p> <p>Conditions have also been included requiring the appointment of a Project Arborist to oversee works adjacent to trees to be retained.</p> <p>No objections are raised to approval subject to conditions as recommended.</p> <p>Planner's Comment: The referral notes that the proposal is for alterations and additions to an existing dwelling. As discussed earlier in the report, the application was incorrectly notified by Council. The error was rectified by way of renotification of the application.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A401989_04).

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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.6m	-	Yes

Floor Space Ratio	FSR: 0.45:1 227.43sqm	FSR: 0.50:1 253.4sqm	11.4%	No
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Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	No
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1
Proposed:	0.50:1
Percentage variation to requirement:	11.4%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor Space Ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

"There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of environmental planning grounds. In particular:

Context

- *The area surrounding the subject site is characterised by large two and three storey detached residential dwellings, a number of which have been modernised and renovated. Many of the dwellings in the vicinity of the subject site contain a garage level plus two additional storeys as illustrated below.*
- *The proposed dwelling has been designed to remain consistent with the character of the area, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices. Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:*
 - *2020/0936 11 Bareena Drive Balgowlah Heights, FSR Variation of 11.5%*
 - *2020/0872 65 Bower Street Manly, FSR variation of 2%*
 - *2020/0979 4 Kangaroo Street Manly, FSR Variation of 9.2%*
 - *2020/1316 1 Peacock Street Seaforth, FSR Variation of 4.44%*
- *The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).*

Future Development

- *The proposed dwelling will allow for the provision of a modern floor plan, with ground floor living and working spaces and first floor bedrooms,*
- *This represents an efficient use of an existing developed site, with all services readily available.*
- *The built form proposed is consistent with other buildings in the locality,*
- *The proposed variation is very minor at just 27.19m² or 11.28% and does not result in any unreasonable impacts to neighbouring properties.*
- *The proposed works will not hinder any future development of the lot.*
- *The refurbishment and alterations proposed demonstrates fulfillment of clause 1.3(a), (b), (c) and (g)."*

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation."

Planner's Comment

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development upgrades the useability of the dwelling and such building is an orderly response to the development of the site;
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties.
- The development promotes a suitable residential use appropriate for the zone.
- The development promotes the proper construction and maintenance of buildings, in so far as the bulk and scale of the proposed development is consistent with the streetscape, notwithstanding the non-compliance with the standard.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposed development is well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works, as the footprint of the proposed dwelling remains largely consistent with the existing building. In regards to townscape features, there are no townscape features within the close vicinity of the subject site.

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

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

public domain,

Comment:

The proposal is consistent with the numeric control under clause 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the Manly DCP. With regards to views, there will be no unreasonable impact to neighbouring private open space or the public realm.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The development is for residential use.

Zone objectives

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

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

Comment:

The proposed building retains its residential use.

It is considered that the development satisfies this objective.

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

Comment:

N/A

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of

the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor Space Ratio development standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 505.4sqm	Control	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 7m (based on gradient 1:12)	7.3m	4.2%	No
	South: 7m (based on gradient 1:12)	7.5m	7.14%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.7m	-	Yes
	Pitch: maximum 35 degrees	7.5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.6m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.43m (based on northern wall height)	First floor - 1.5m - 2.36m	2.1% - 38.3%	No
	2.5m (based on southern wall height)	First floor 1.65m - 2.49m	34%	No
	Windows: 3m	1.51m - 1.65m	50%	No
4.1.4.4 Rear Setbacks	8m	8.2m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% (277.97m ²) of site area	47% (237.2m ²)	14.5%	No
	Open space above ground 25% of total open space	6.9% (16.51m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (83.02sqm) of open space	39.67% (94.1sqm)	-	Yes
	3 native trees	1 trees	66%	No
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5m	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0m	-	Yes
	1m curtilage/1.5m water side/rear setback	1.1m, 1.3m - 1.58m	14%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

Visual Privacy

The proposed outdoor living area to the rear of the dwelling house is adequately screened along the northern and southern side to mitigate potential overlooking between neighbours. The first floor balcony off the master bedroom while not screened is considered reasonable given the physical separation from the northern and southern property boundaries, 2.336m to the north and 2.495m to the south. The proposed balcony will not directly overlook neighbouring properties and is off a low use room (bedroom). No further privacy provisions are required in this instance.

Acoustic Privacy

The application includes a swimming pool to the rear of the property. A condition of consent has been included as part of this recommendation to ensure that the pool filter box and any associated mechanical units associated with the house are sound insulated and centrally located onsite to ensure no unreasonable aural impact to adjoining properties.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposed outdoor living areas proposed as part of this development have been appropriately screened and offset from adjoining properties to maintain privacy .

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not compromise casual surveillance of the street from the property.

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

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

Description of non-compliance

4.1.2 of the MDCP 2013 limits building to 2 storeys in height. The proposal is 3 storeys in height, which does not satisfy this requirement. The 3 storey component occurs at the front of the structure over the footprint of the garage, with the rear half of the structure being a 2 storey building.

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

- North Elevation: 7m (1:12 gradient).

- South Elevation: 7m (1:12 gradient).

The wall height along the northern elevation of the proposed first floor addition is 7.3m, non-compliant with the numeric control, which represents a 4.2% variation from this requirement. The maximum wall height along portions of the southern elevation is 7.5m in height, which represents a 7.14% variation from this requirement.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the objectives of the control. The control relies upon the objectives specified within Clause 4.3 of the MLEP 2013.

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

Comment:

The proposal complies with the Height of buildings development standard and therefore, meets the desired building height envisaged for the site. The proposed dwelling follows the slope of the land.

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

Comment:

The proposal complies with the Height of buildings development standard the primary control of bulk and scale. The proposed development incorporates various building materials and is well articulated, which further minimises visual bulk. Overall, the resulting built form is considered to be appropriate in the context of the site.

(c) to minimise disruption to the following—

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

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

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

Comment:

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

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

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might

conflict with bushland and surrounding land uses.

Comment:

The site is not located within an environmental protection or recreation zone.

Concluding Remarks

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

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.7m from the eastern boundary, 2.9m from the western boundary. Further, windows are to be setback 3m from side property boundaries.

The development proposes the following:

North side setback- 1.5m - 2.36m (2.1% - 38.3% variation to the numeric control).

South side setback- 1.65m - 2.49m (34% variation to the numeric control).

Windows - 1.51m - 1.65 (50% variation)

Merit consideration:

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

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

Comment:

The development is appropriately setback from the front property boundary (7.6m). The proposed development is consistent with the established streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is

consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will ensure view of the harbour and heads will be retained from surrounding properties. There is no significant impact on the streetscape, subject to conditions.

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

Comment:

Flexibility is provided in this circumstance as the proposed dwelling house will not result in any unreasonable impacts upon adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

Suitable landscaping is provided across the site. Subject to conditions imposed by Council's Landscape officer the proposal complies with this clause.

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

Comment:

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

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at least 55% (277.97m²) of the site area be total open space. The proposed total open space is 47% (237.2m²), non-compliant with the numeric control. This represents a 14.5% variation to the numeric control.

Further, Clause 4.1.5.2 also requires 3 native trees be planted on site. The proposed development has zero native trees on site. Council's landscape officer has imposed a conditions for 3 new native trees to be planted prior to occupation certificate.

Merit consideration:

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

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

Comment:

The development does not result in the removal of significant canopy trees, which would result in the character of the site being compromised or impact populations of flora and fauna. The proposed development will improve the landscaping on the site, subject to conditions.

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

Comment:

The proposed works propose a suitable level of landscaped open space, compliant with the landscaped open space control under Clause 4.1.5.2 of the Manly DCP.

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

Comment:

Amenity considerations including sunlight access, privacy and views have all been considered as part of this application, with no unreasonable impacts upon the subject site or neighbouring properties. The established streetscape character is not likely to be impacted by the proposed works.

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

Comment:

Significant levels of deep soil areas are proposed around the site to ensure no unreasonable stormwater runoff, subject to conditions.

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

Comment:

The proposed planting on site is suitable for the site, subject to conditions, so as not to contribute to the spread of weeds and the degradation of nearby public open space.

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

Comment:

The proposed development does not compromise any wildlife habitats or potential wildlife corridors.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9 of the Manly DCP requires swimming pool be setback 1m from the pool curtilage and 1.5m from the waters edge. The proposed swimming pool is setback 1.3m - 1.5m from the waters edge, non-compliant with the numeric control.

Merit consideration:

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

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The proposed swimming pool is adequately setback from the rear and side boundaries. The proposed swimming pool will not result in any unreasonable privacy impacts. The swimming pool is suitable in this residential context.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The pool is located to the rear of the property. The swimming pool will not be readily visible from the street. The resulting impact on the streetscape is negligible.

Objective 3) To integrate landscaping; and

Comment:

Landscaping is proposed to the rear and sides of the swimming pool. The proposal will meet the numeric control for landscape open space across the site. The existing and proposed landscape may further offset the visual impact of the swimming pool from surrounding properties.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The subject site is not located in a bush fire asset protection zone, however the pool may be a viable water resource during bushfire emergencies.

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

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 \$9,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$920,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

2) The proposed development will be in the public interest because it is consistent with the objectives of

the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The application seeks consent for demolition works and construction of a dwelling house and swimming pool

The key planning issues considered within the assessment is the proposed variation to the Floor Space Ratio development standard.

Notwithstanding the proposed floor space variation of 11.4%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

Minor DCP control variations have been addressed within the report and found to be acceptable on merit.

Assessment of the application against the Manly LEP and DCP finds that the development is suitable in the context of the site, and is recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/0617 for Demolition works and Construction of a new dwelling and swimming pool on land at Lot 14 DP 13468, 37 Radio Avenue, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02	27 April 2021	Action Plans
DA06	27 April 2021	Action Plans
DA07	27 April 2021	Action Plans
DA08	27 April 2021	Action Plans
DA09	27 April 2021	Action Plans

DA10	27 April 2021	Action Plans
DA11	27 April 2021	Action Plans
DA12	27 April 2021	Action Plans
DA13	27 April 2021	Action Plans
DA14	27 April 2021	Action Plans
DA21	27 April 2021	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A401989_04	27 April 2022	Action Plans
Arboricultural Report	13 May 2021	Hugh the Arborist
Geotechnical Report	13 January 2021	Ascent Geotechnical Consulting

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	15 May 2021	Bridget and Phil Holmewood

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,200.00 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 \$920,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount

unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY.

Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

7. **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.

8. **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.

9. **External Finishes to Roof**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

10. **Project Arborist**

A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with the Arboricultural Impact Assessment dated 13 May 2021 prepared by Hugh the Arborist and Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

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

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

11. 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.

12. 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.

13. **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 Arboricultural Impact Assessment dated 13 May 2021 prepared by Hugh the Arborist and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must:
 - i) be in place before work commences on the site, and
 - ii) be maintained in good condition during the construction period, and

iii) remain in place for the duration of the construction works.

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.

14. **Road Reserve**

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

Reason: Public safety.

15. **Survey Certificate**

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

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

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

16. **Vehicle Crossings**

The Applicant is to construct a vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/4 EH 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**

17. **Required Tree Planting**

- a) Trees shall be planted in accordance with the following:

- i) 3 trees capable of attaining a minimum height of 5 metres; located within the grounds of the property; minimum pot size 200mm
- b) Tree planting shall be located wholly within the site and be located a minimum of 2 metres from existing and proposed buildings and other trees.
- c) 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.
- d) Native tree planting species may be selected from Council's list:
www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.
- e) 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.

18. **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.

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

19. **Landscape Maintenance**

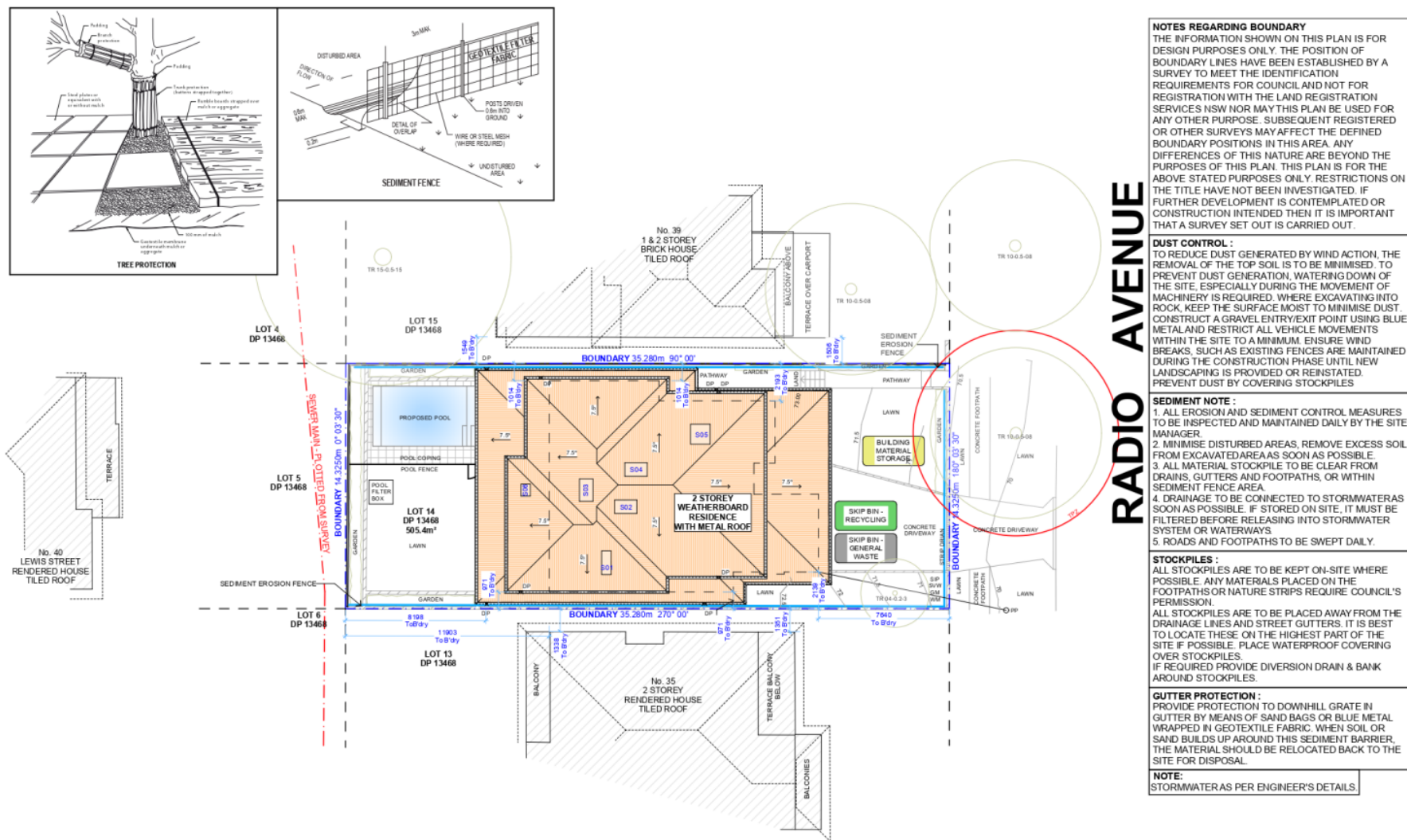
- a) Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.
- b) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.
- c) All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

20. **Mechanical Noise**

All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

Reason: To ensure an appropriate level of residential amenity.



1

SITE / STORMWATER CONCEPT / WASTE MANAGEMENT / SEDIMENT EROSION PLAN

1:200



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LEGEND
 EXISTING
 PROPOSED
 DEMOLISHED

CLIENT
BRIDGET & PHIL
HOLMEWOOD

PROJECT ADDRESS
37 RADIO AVENUE,
BALGOWLAH HEIGHTS
2093

DRAWING NO.
DA02

DATE
Tuesday, 27 April 2021

DRAWING NAME
SITE / ROOF / SEDIMENT EROSION /
WASTE MANAGEMENT /
STORMWATER CONCEPT PLAN




SCALE
1:200 @A3





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LEGEND

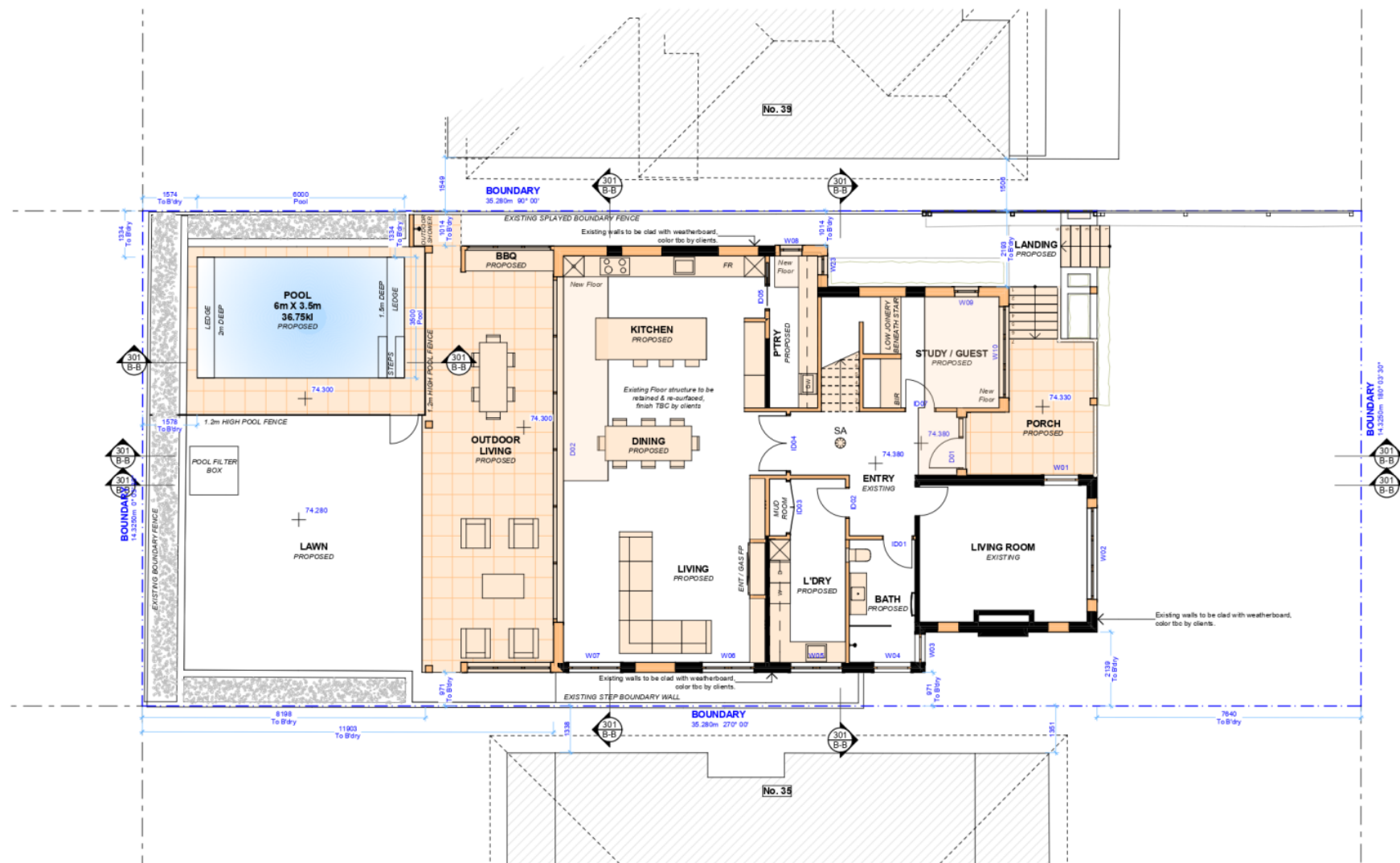
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	DEMOLISHED

DRAWING NO.
DA06

DATE
Tuesday, 27 April 2021

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 PROPOSED
 DEMOLISHED

CLIENT
BRIDGET & PHIL
HOLMEWOOD

PROJECT ADDRESS
37 RADIO AVENUE,
BALGOWLAH HEIGHTS
2093

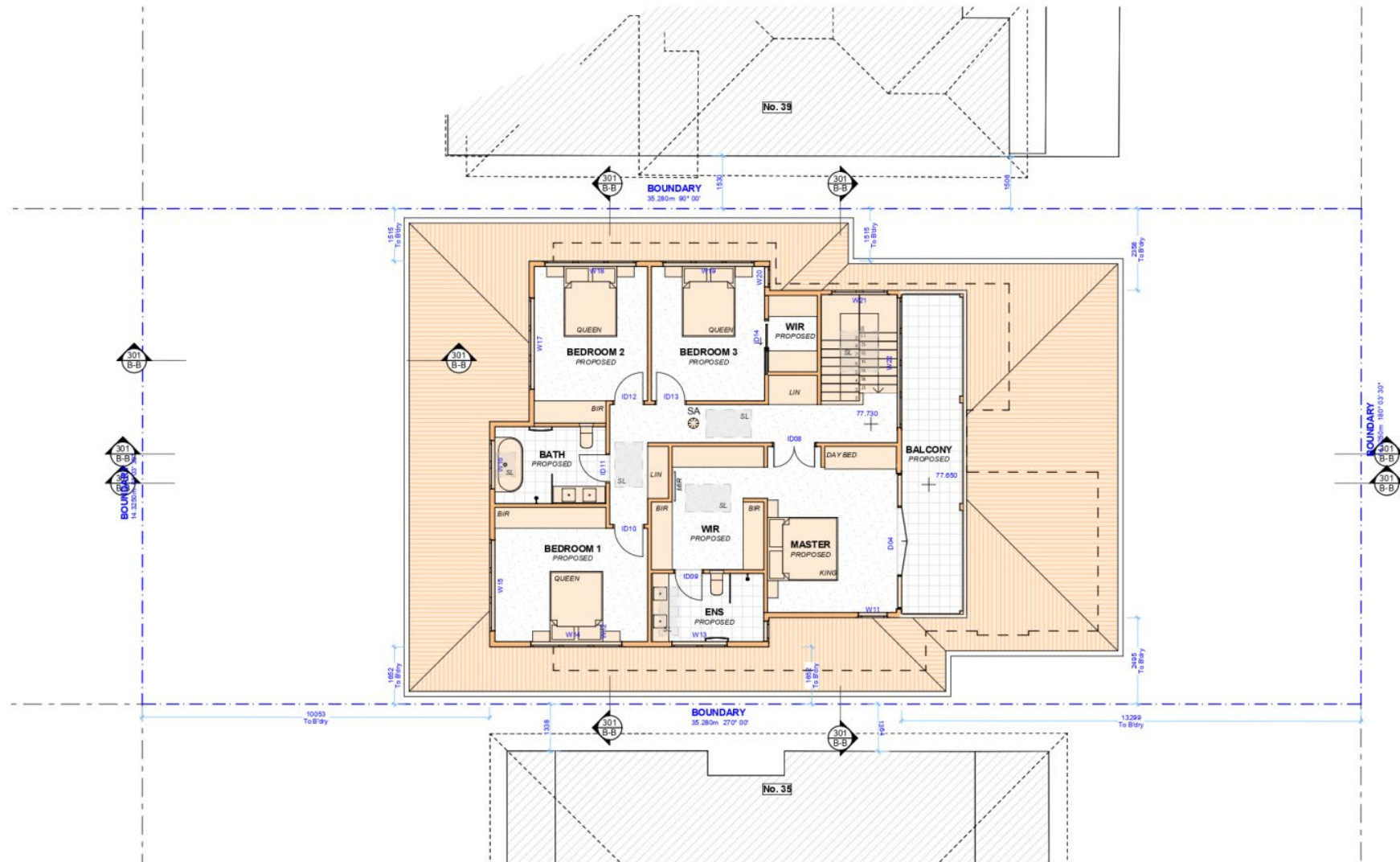
DRAWING NO.
DA07

DATE
Tuesday, 27 April 2021

DRAWING NAME
PROPOSED GROUND FLOOR PLAN

SCALE
1:100 @A3





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LEGEND
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 PROPOSED
 DEMOLISHED

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BALGOWLAH HEIGHTS
2093

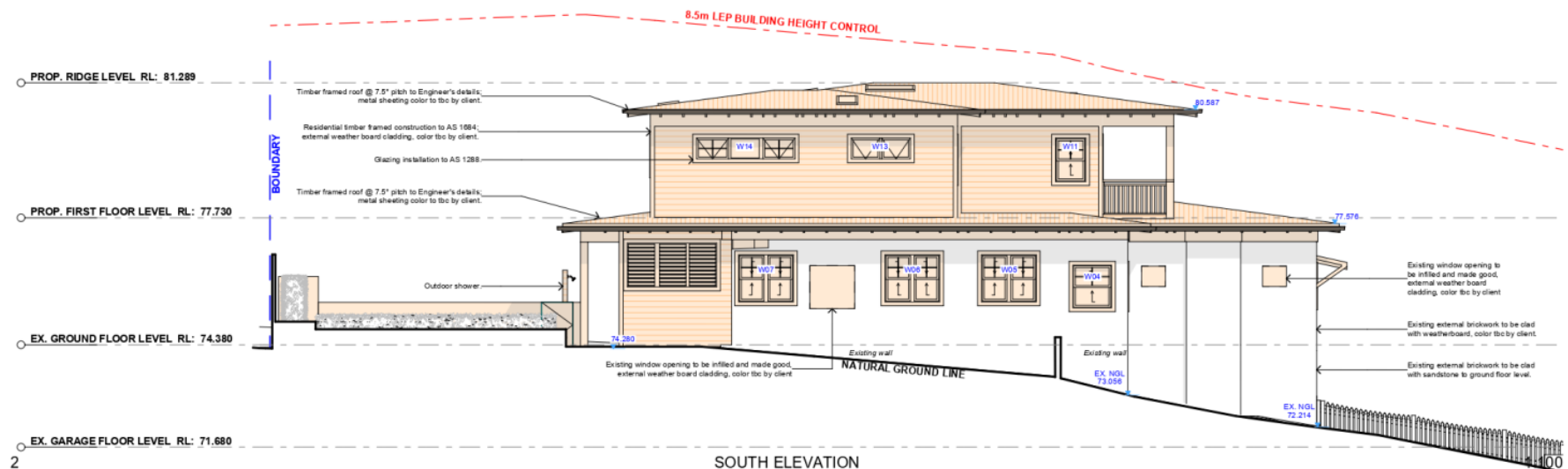
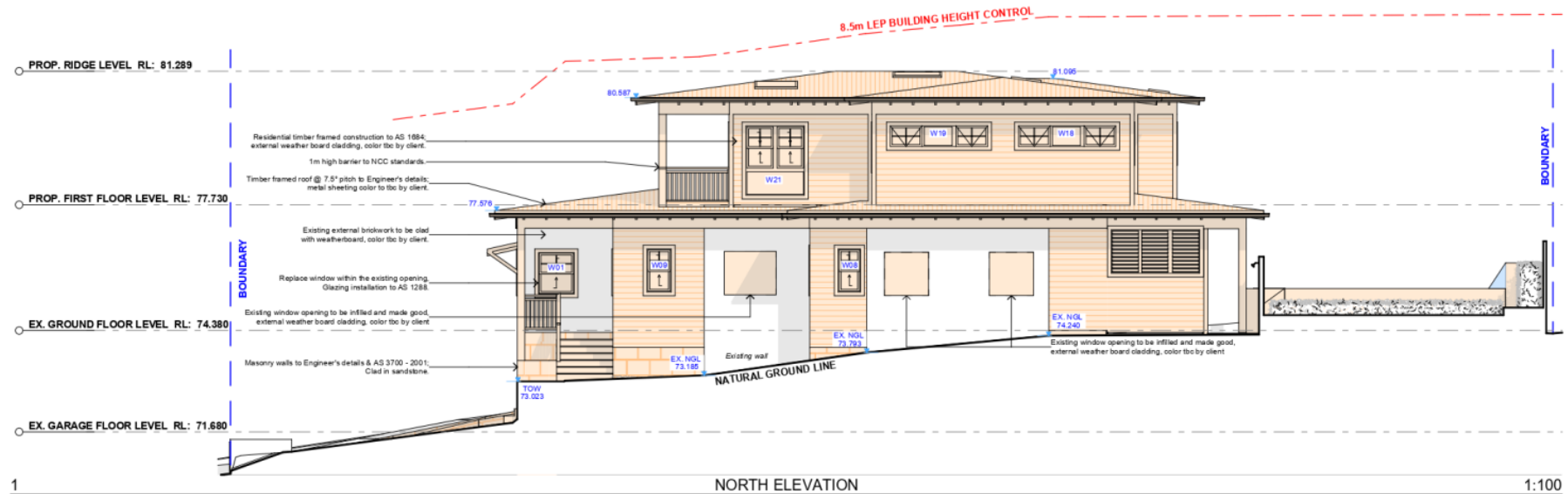
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DA08

DATE
Tuesday, 27 April 2021

DRAWING NAME
PROPOSED FIRST FLOOR PLAN

SCALE
1:100 @A3





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LEGEND	
	EXISTING
	PROPOSED
	DEMOLISHED

CLIENT
BRIDGET & PHIL
HOLMEWOOD

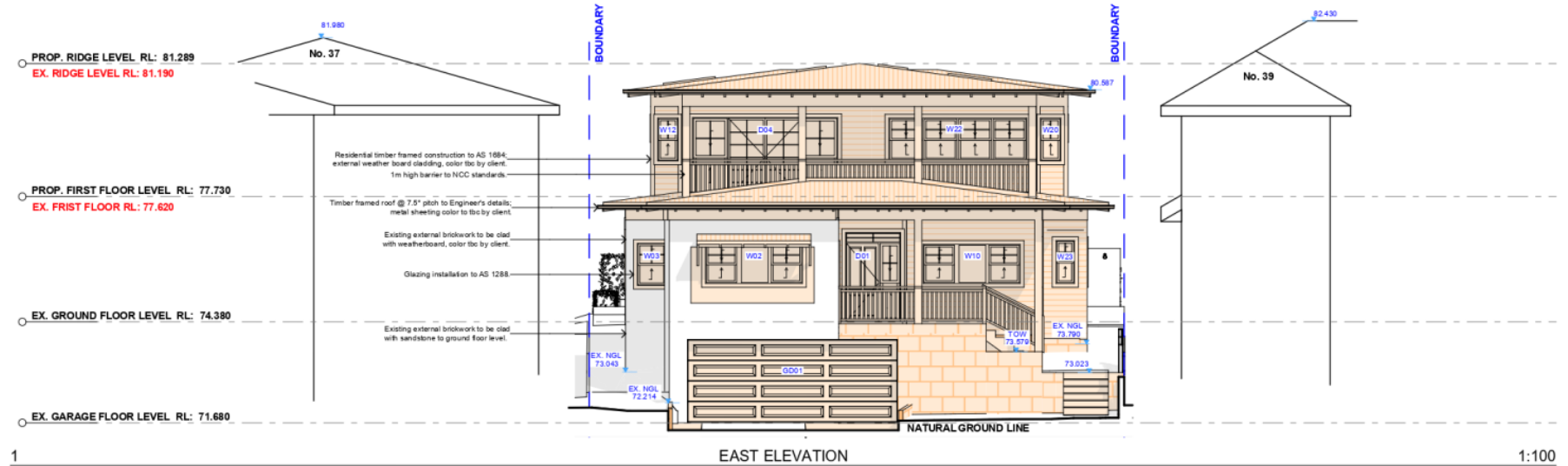
PROJECT ADDRESS
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BALGOWLAH HEIGHTS
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DRAWING NO.
DA09

DATE
Tuesday, 27 April 2021

DRAWING NAME
NORTH / SOUTH ELEVATIONS

SCALE
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LEGEND	
	EXISTING
	PROPOSED
	DEMOLISHED

CLIENT
BRIDGET & PHIL
HOLMEWOOD

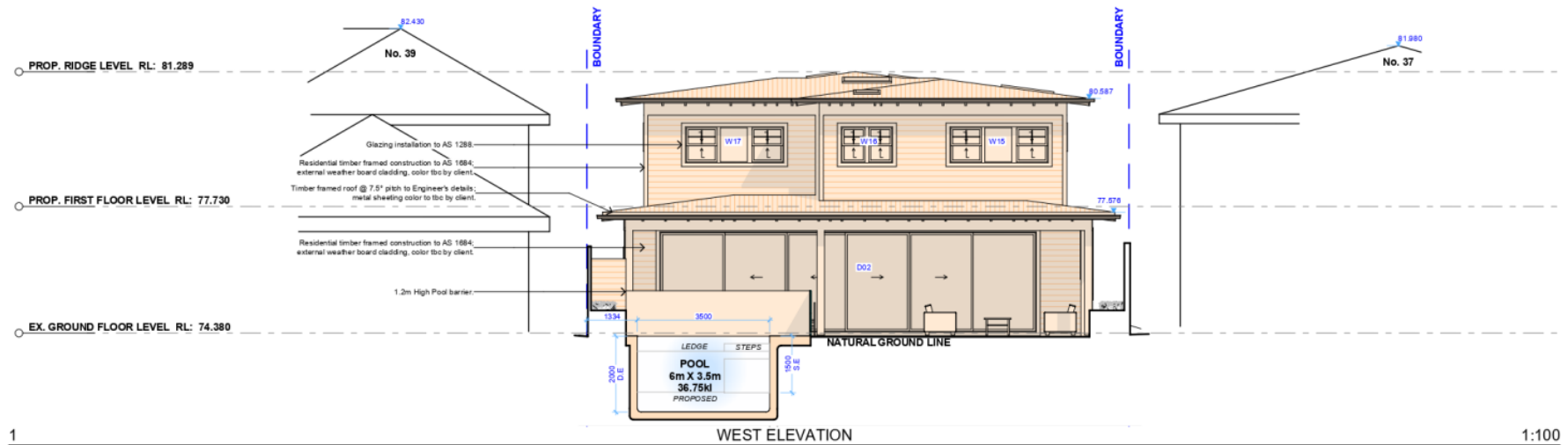
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BALGOWLAH HEIGHTS
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DRAWING NO.
DA10

DATE
Tuesday, 27 April 2021

DRAWING NAME
EASTERN ELEVATIONS

SCALE
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PROPOSED
DEMOLISHED

CLIENT
BRIDGET & PHIL
HOLMEWOOD

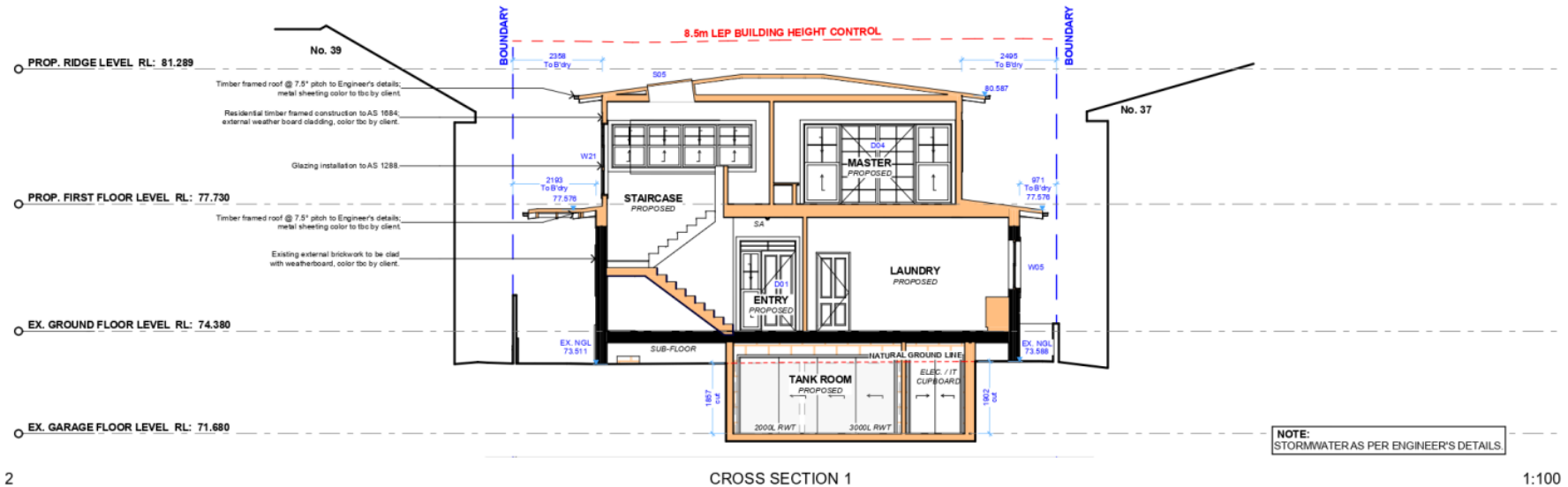
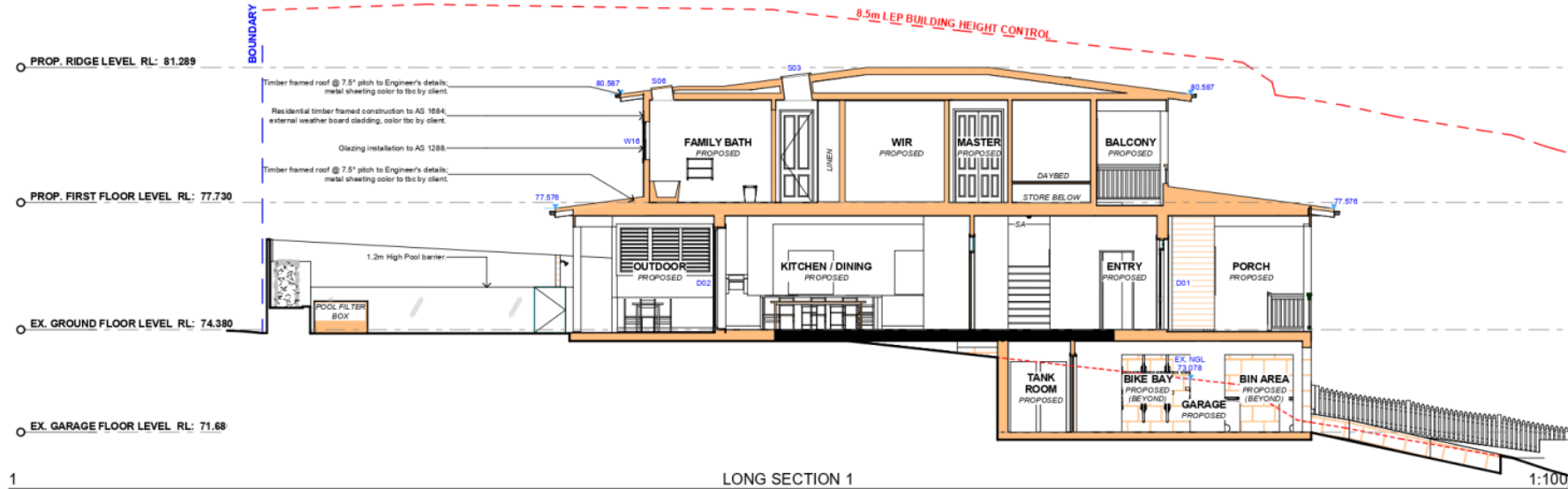
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DRAWING NO.
DA11

DATE
Tuesday, 27 April 2021

DRAWING NAME
WESTERN ELEVATIONS

SCALE
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LEGEND
EXISTING
PROPOSED
DEMOLISHED

CLIENT
BRIDGET & PHIL
HOLMEWOOD

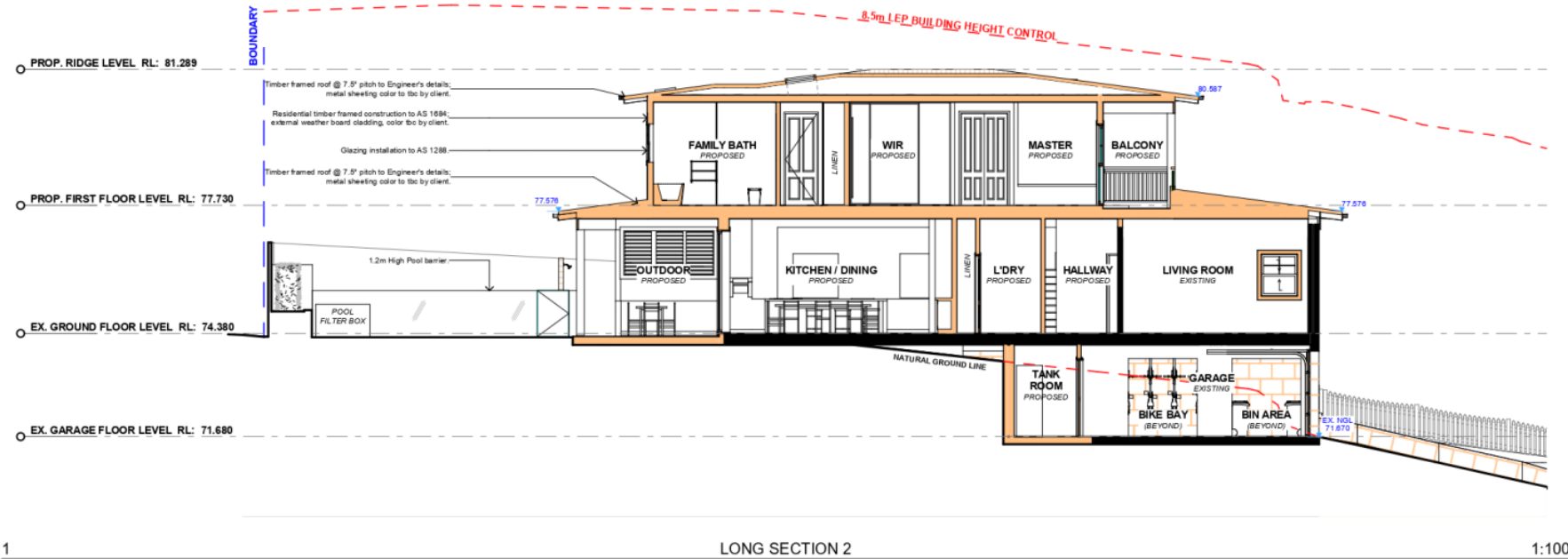
PROJECT ADDRESS
37 RADIO AVENUE,
BALGOWLAH HEIGHTS
2093

DRAWING NO.
DA12

DATE
Tuesday, 27 April 2021

DRAWING NAME
LONG SECTION 1 / CROSS SECTION

SCALE
1:100 @A3



NOTE:
STORMWATERAS PER ENGINEER'S DETAILS.



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LEGEND
 EXISTING
 PROPOSED
 DEMOLISHED

CLIENT
BRIDGET & PHIL
HOLMEWOOD

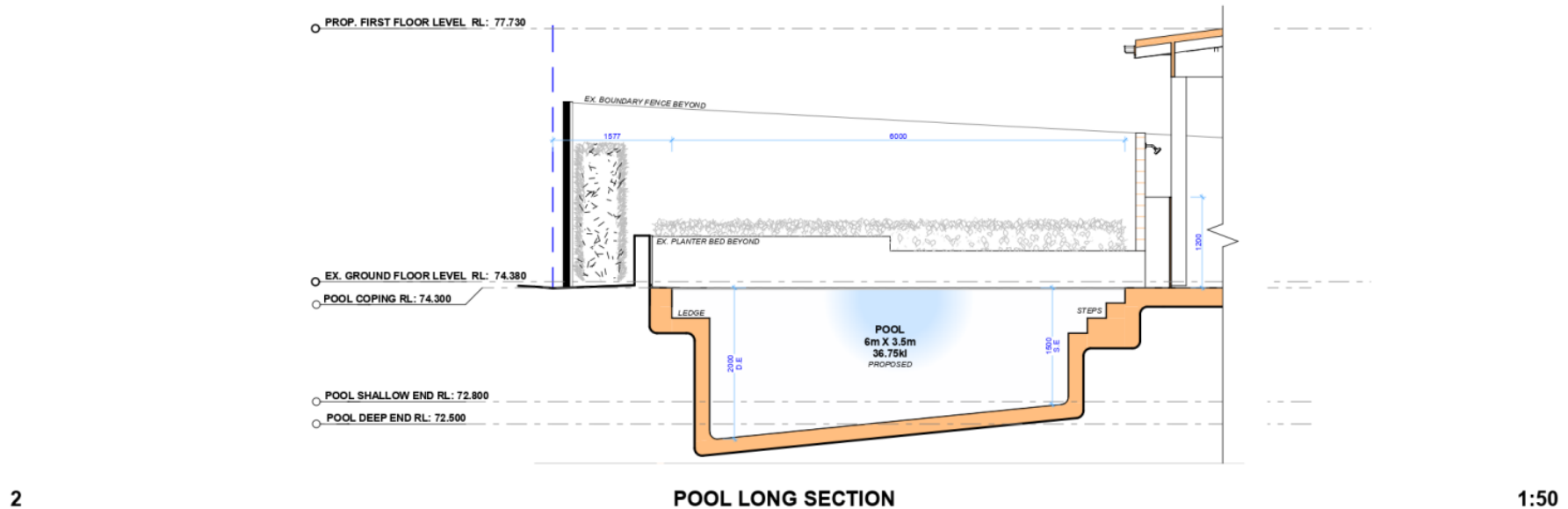
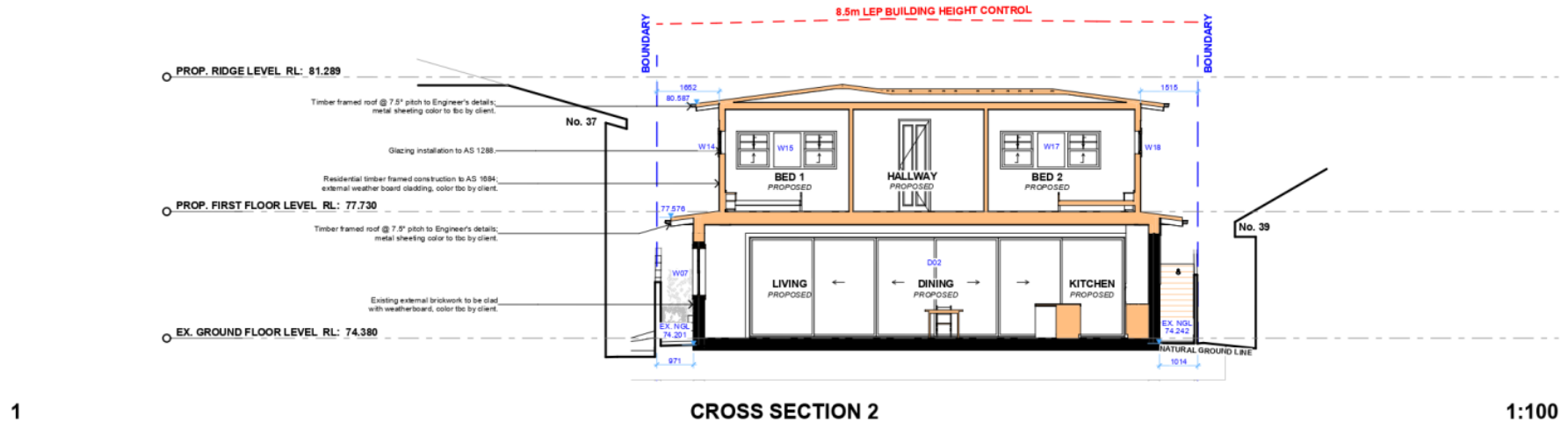
PROJECT ADDRESS
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DRAWING NO.
DA13

DATE
Tuesday, 27 April 2021

DRAWING NAME
LONG SECTION 2

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LEGEND

CLIENT
BRIDGET & PHIL
HOLMEWOOD

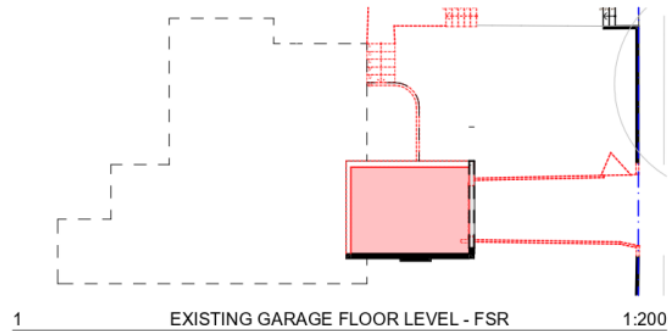
PROJECT ADDRESS
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BALGOWLAH HEIGHTS
2093

DRAWING NO.
DA14

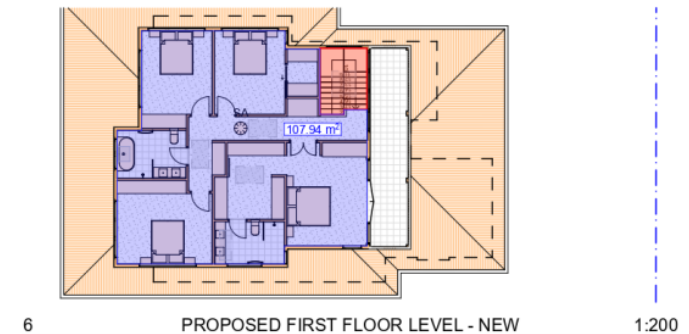
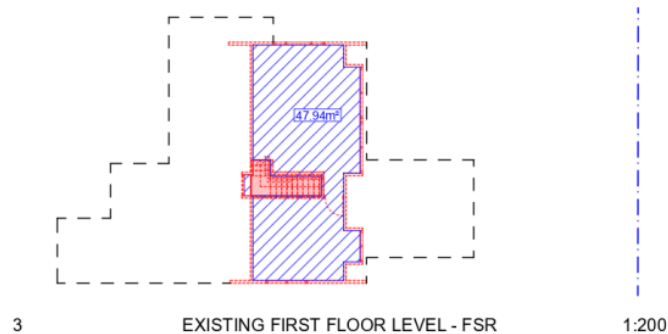
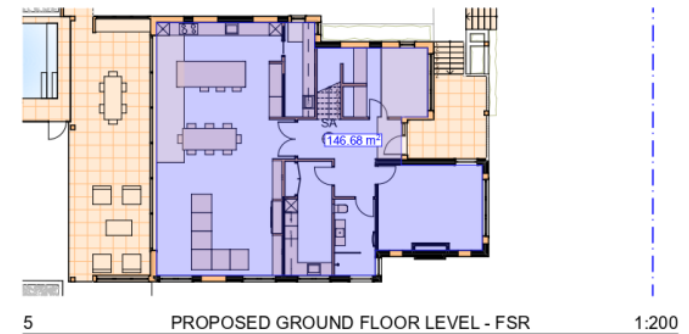
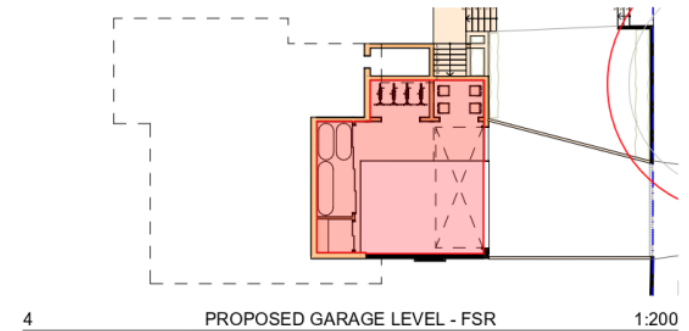
DATE
Tuesday, 27 April 2021

DRAWING NAME
CROSS SECTION 2 & POOL
LONG SECTION

SCALE
1:50, 1:100 @A3



CONTROL TABLE		
SITE AREA 505.4m ²		
Floor Space Ratio		
Required:	0.45%	(227.43m ²)
Existing:	0.37%	(185.04m ²)
Proposed:	50%	(254.62m ²)



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LEGEND	
[Red outline]	NOT INCLUDED IN AREA CALCULATIONS
[Blue hatched]	EXISTING AREA CALCULATION
[Purple hatched]	PROPOSED AREA CALCULATION





1 PROPOSED SITE CALCULATIONS 1:200



2 EXISTING SITE CALCULATIONS 1:200



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LEGEND

- TOTAL OPEN SPACE
- LANDSCAPE OPEN SPACE
- PRIVATE OPEN SPACE
- OPEN SPACE ABOVE GROUND

CLIENT
BRIDGET & PHIL
HOLMEWOOD

PROJECT ADDRESS
37 RADIO AVENUE,
BALGOWLAH HEIGHTS
2093

DRAWING NO.
DA16

DATE
Tuesday, 27 April 2021

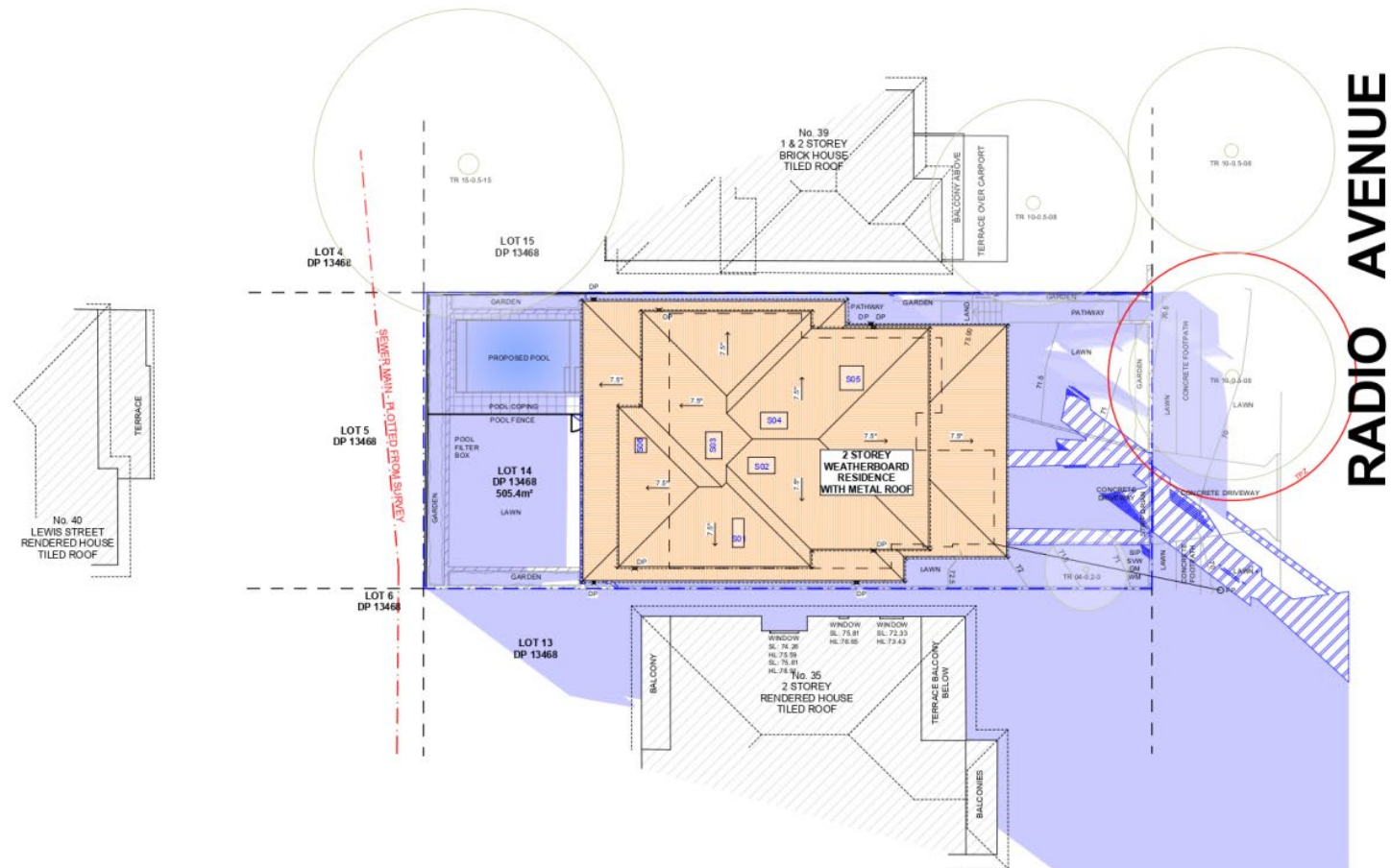
DRAWING NAME
SITE CALCULATIONS

SCALE
1:200 @A3









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LEGEND
EXISTING SHADOWS
PROPOSED SHADOWS

CLIENT
BRIDGET & PHIL
HOLMEWOOD

PROJECT ADDRESS
37 RADIO AVENUE,
BALGOWLAH HEIGHTS
2093

DRAWING NO.
DA19

DATE
Tuesday, 27 April 2021

DRAWING NAME
WINTER SOLSTICE 3 PM

SCALE
1:200 @A3



Appendix 1 - Clause 4.6 Exceptions to Development Standards – Floor Space Ratio

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (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 aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

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

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

(4)(a)(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,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

1.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R2 – Low Density Residential

1.3 What are the objectives of the zone?

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

1.4 What is the development standard being varied?

Cl 4.4 – Floor Space Ratio

**1.5 Under what clause is the development standard listed in the environmental planning instrument?**

Cl 4.4 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

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

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the FSR development standard applicable to the subject site is 0.45:1, this equates to a maximum floor area of 227.43m² for the site area of 505.4m².

1.8 What is proposed numeric value of the development standard in your development application?

The development proposes a maximum floor area of 254.62m² or 0.5:1.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 11.28% or 27.19m²



2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:



1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone



objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

5. Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.



3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - *Wehbe v Pittwater*

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

The objectives of the standard are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment

The proposed development adopts a modern built form with a bulk and scale consistent with the existing dwelling and other dwellings in the locality.

The proposed variation is minor at just 11.28% or 27.19m² and is considered reasonable given the proposed development does not present with excessive bulk and is of a similar or lesser scale than adjoining properties. It is considered this objective is met, despite the numerical variation.

- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment

The proposed built form, setbacks and massing are considered to be consistent with other dwellings in the locality and remain consistent with the existing dwelling. The proposal is appropriately massed and articulated to be compatible with the prevailing streetscape character within the locality and to minimise any impacts on adjoining properties.



A site visit has been undertaken and it is considered the development will not result in any view loss impacts.

It is therefore considered this objective is met, despite the numerical variation.

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

Comment

The proposed variation does not require the removal or pruning of trees on the subject site or on adjoining properties. The proposed works are largely located on the portion of the lot that is already disturbed and it is considered the built form is consistent with new development in the locality and the existing dwelling. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

The proposed variation to floor space ratio does not result in any unreasonable environmental impacts to the amenity of adjoining dwellings. Compliant levels of solar access are maintained despite the proposed variation and there will be no impact on views, visual privacy or acoustic privacy. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment

Not relevant as the subject site is no located in a business zone.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.



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

This exception to development standards request does not rely on this reason.

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

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the floor space ratio control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The area surrounding the subject site is characterised by large two and three storey detached residential dwellings, a number of which have been modernised and renovated. Many of the dwellings in the vicinity of the subject site contain a garage level plus two additional storeys as illustrated below.
- The proposed dwelling has been designed to remain consistent with the character of the area, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices.



Figure 1. No. 35, 33 & 31 Radio Avenue – the adjoining properties to the south.



Figure 2. No. 39 Radio Avenue – the adjoining property to the north.

- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:
 - 2020/0936 11 Bareena Drive Balgowlah Heights, FSR Variation of 11.5%
 - 2020/0872 65 Bower Street Manly, FSR variation of 2%
 - 2020/0979 4 Kangaroo Street Manly, FSR Variation of 9.2%
 - 2020/1316 1 Peacock Street Seaforth, FSR Variation of 4.44%
- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

**Future Development**

- The proposed dwelling will allow for the provision of a modern floor plan, with ground floor living and working spaces and first floor bedrooms,
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with other buildings in the locality,
- The proposed variation is very minor at just 27.19m² or 11.28% and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot.
- The refurbishment and alterations proposed demonstrates fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for a new dwelling in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.
- The development does not require the removal of any significant native vegetation and complies with Council DCP landscape area controls.
- The new dwelling proposed, allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It provides the opportunity to work from home in a dedicated home office and utilises existing services, satisfying Cl 1.3(b). Accordingly refusal of the development based on this reason would be unreasonable.



Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

Objectives of zone

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

Consistent. The proposal is for partial demolition of the existing dwelling and the construction of a new dwelling and swimming pool.

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

Not relevant. The proposal is for a residential dwelling.

Despite the proposal seeking an exception to the floor space ratio clause, the bulk and scale of the building will have minimal effects as it represents a minor exceedance and is consistent



with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- (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.

Strict numerical compliance with the 0.45:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development for partial demolition of the existing dwelling and the construction of a new dwelling and swimming pool, on land zoned R2 – Low Density Residential is appropriate and reasonable for the following reasons:

- There is recent precedent for similar variations to Cl 4.4 FSR of the Manly LEP 2013 being accepted by Council,
- The proposed development does not present with excessive bulk and is of a consistent scale to surrounding properties. The proposal will not result in any unreasonable impacts.
- The works proposed will allow for a modern dwelling, to meet the housing needs of the residents, including an opportunity to work from home, in their current community,
- The objectives of the R2 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.