

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

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

**WEDNESDAY 11 AUGUST 2021**



**Ashleigh Sherry**  
**Manager Business Systems and Administration**



## **Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 11 August 2021**

|            |  |          |
|------------|--|----------|
| <b>1.0</b> | <b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>  |          |
| <b>2.0</b> | <b>MINUTES OF PREVIOUS MEETING</b>   |          |
| 2.1        | Minutes of Development Determination Panel held 28 July 2021   |          |
| <b>3.0</b> | <b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>   | <b>5</b> |
| 3.1        | DA2021/0129 - 107 Frenchs Forest Road, Seaforth - Demolition works and construction of a dwelling house. ....  | 5        |
| 3.2        | REV2021/0016 - 61 Dress Circle Road, Avalon Beach - Review of Determination of Application DA2020/1194 granted for alterations and additions to a dwelling house. .... | 65       |
| 3.3        | DA2021/0419 - 266 Whale Beach Road, Whale Beach - Demolition works and construction of a dwelling house. ....  | 79       |

## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 28 JULY 2021**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 28 July 2021 were approved by all Panel Members and have been posted on Council's website.

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

|                   |  |
|-------------------|--|
| ITEM 3.1          | DA2021/0129 - 107 FRENCHS FOREST ROAD, SEAFORTH -<br>DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING<br>HOUSE. |
| REPORTING MANAGER | Anna Williams  |
| TRIM FILE REF     | 2021/549288  |
| ATTACHMENTS       | 1 Assessment Report<br>2 Working Plans<br>3 Report - Caluse 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.

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#### RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council, as the consent authority, **approves** Development Consent to DA2021/0129 for Demolition works and construction of a dwelling house on land at Lot 1 DP 1125216, 107 Frenchs Forest Road, Seaforth, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|   |   |
|---|---|
| <b>Application Number:</b>                | DA2021/0129   |
| <b>Responsible Officer:</b>               | David Auster  |
| <b>Land to be developed (Address):</b>    | Lot 1 DP 1125216, 107 Frenchs Forest Road SEAFORTH NSW 2092 |
| <b>Proposed Development:</b>              | Demolition works and construction of a dwelling house       |
| <b>Zoning:</b>                            | Manly LEP2013 - Land zoned R2 Low Density Residential       |
| <b>Development Permissible:</b>           | Yes   |
| <b>Existing Use Rights:</b>               | No  |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                    |
| <b>Delegation Level:</b>                  | DDP   |
| <b>Land and Environment Court Action:</b> | No  |
| <b>Owner:</b>                             | Michael James Molloy<br>Kathryn Joanne Molloy               |
| <b>Applicant:</b>                         | Icon Homes Northern Beaches                                 |
| <b>Application Lodged:</b>                | 25/02/2021  |
| <b>Integrated Development:</b>            | No  |
| <b>Designated Development:</b>            | No  |
| <b>State Reporting Category:</b>          | Residential - Single new detached dwelling                  |
| <b>Notified:</b>                          | 04/03/2021 to 18/03/2021                                    |
| <b>Advertised:</b>                        | Not Advertised  |
| <b>Submissions Received:</b>              | 2   |
| <b>Clause 4.6 Variation:</b>              | 4.4 Floor space ratio: 13.3%                                |
| <b>Recommendation:</b>                    | Approval  |
| <b>Estimated Cost of Works:</b>           | \$ 624,820.00   |

### Executive Summary

The proposal involves demolition of the existing structures on site and construction of a new two storey dwelling. The proposal results in a significant non-compliance with the Floor Space Ratio development standard, and also non-compliance with the side, front and rear setback controls, and the open space control.

Submissions were received from two neighbours to the rear, who raised issues with regard to bulk and scale, view loss, solar access, privacy, and landscaping.

During the assessment the applicant was requested to amend the plans to reduce the overall size of the dwelling, and particularly to decrease floor space and increase setbacks at the upper level. The

amendments reduced the level of non-compliance, although the building remains non-compliant with the above mentioned controls.

The assessment of the amended plans has found that the level of non-compliance proposed is generally acceptable for the reasons discussed within the report, and the application is recommended for approval.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal involves demolition of the existing structures on site, and construction of a new two storey dwelling. The dwelling will be comprised of the following elements:

Ground Floor:

- Double garage
- Media room
- Open plan living / dining / kitchen
- Rear alfresco

Upper Level:

- Four bedrooms
- Sitting room
- Two bathrooms
- Two walk in robes
- Front balcony off Bed 1

The applicant amended the plans during the assessment process as a result of concerns raised by Council. This resulted in an overall reduction in floor space and increase to proposed setbacks at the upper level, including side and rear setbacks. The amended plans are the subject of this assessment. Due to reducing environmental impacts because of the reduced size of the dwelling, in accordance with the Community Consultation Plan the application was not renotified.

## **ASSESSMENT INTRODUCTION**

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

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

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Development Control Plan - 3.4.3 Maintenance of Views  
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

## SITE DESCRIPTION

|                                   |   |
|-----------------------------------|---|
| <b>Property Description:</b>      | Lot 1 DP 1125216 , 107 Frenchs Forest Road SEAFORTH NSW 2092  |
| <b>Detailed Site Description:</b> | <p>The site is a regular shaped lot with an area of 362.59sqm, width of 14.24m, and depth of 25.465m, located on the southern side of Frenchs Forest Road. The site has a gentle cross fall from east to west, and also falls gently from rear to front.</p> <p>The site currently accommodates a single storey dwelling with outbuildings located in the front setback area.</p> <p>Surrounding development consists of detached dwellings of various ages and styles.</p> |

Map:



## SITE HISTORY

The site has a history of residential use, with no other recorded uses. The existing dwelling appears to have been in place for an extended period of time.

CDC2021/0038 - On 15 January 2021 Complying Development Certificate 200159/01 was issued for the construction of an in-ground swimming pool at the subject address by Garnett Certifications. The applicant has submitted an email to Council requesting to withdraw this approval as a result of the assessment of the current application for a dwelling. Should the application be approved, a condition will be recommended requiring surrender of the Complying Development Certificate.

#### 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&amp;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&amp;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&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to non-compliant elements of the proposal. The applicants submitted amended plans and an amended clause 4.6 statement, which are the subject of this assessment.</p> <p><u>Clause 92</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not</p> |



| Section 4.15 Matters for Consideration'  | Comments   |
|--|--|
|  | <p>relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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&amp;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) <b>Environmental Impact</b><br/>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) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>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 04/03/2021 to 18/03/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and

Assessment Regulation 2000 and the Community Participation Plan.

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

| Name:                                       | Address:                              |
|---|---------------------------------------|
| Mr Kevin Brian Sullivan                     | 78 Macmillan Street SEAFORTH NSW 2092 |
| Mr Colin William Bruce<br>Ms Rhonda Andrews | 80 Macmillan Street SEAFORTH NSW 2092 |

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

- Privacy
- Solar access
- Outlook / views
- Floor space ratio
- Height
- Landscaping
- Side and rear setbacks

The matters raised within the submissions are addressed as follows:

- **Privacy**

Concerns were raised by the neighbour to the rear (78 Macmillan) with regard to the rear facing upper level bedroom windows. Further concern was raised that the pool in the rear setback (approved by a separate Complying Development Certificate) would limit scope for screen planting.

Comment:

The ground level of the subject site is significantly lower than 78 Macmillan, and the existing rear boundary fence between the properties offers good screening at the lower levels, where both dwellings will have their main living levels. The upper level proposed rear facing windows are two bedroom windows and a bathroom window. The bathroom is noted on the plans as being obscure glazing. The closest bedroom window is setback 8m from the rear boundary in compliance with the rear setback control, and the other bedroom window is setback 9.52m. These are low use rooms, and are located well back from the rear boundary. It is a reasonable expectation to have upper level bedroom windows overlooking a rear yard area, and they will be similar to the bedroom windows located at 78 Macmillan Street which currently overlook into the subject site. The submissions are not supported in relation to this issue.

The CDC for the pool has been withdrawn by the applicant to provide extra landscaped area. No screen planting is proposed along the rear boundary. A condition could be included to provide this. However, the screen planting would need to be a significant height to block views between the upper level bedroom windows, and as a result would likely have significant impacts on solar access of the southern neighbour, which is another objection as discussed below. Given the low use nature of the upper level rooms, combined with the setbacks, the proposal is not considered to result in unreasonable privacy impacts.

- **Solar access**

Concerns were raised with the shadows cast onto 78 and 80 Macmillan Street. Further concerns

were raised that this would lead to increased energy and lighting costs.

Comment:

The shadow diagrams submitted indicate that the southern neighbours will receive compliant solar access in accordance with the requirements of clause 3.4.1 of the DCP. The development will overshadow the rear yard areas of 78 and 80 Macmillan at 9am, but by 12pm on the winter solstice there will be almost no overshadowing of the southern neighbours. At 3pm the shadows fall almost entirely on the eastern neighbour. The amended plans have set the upper level back a minimum of 8m, in compliance with the rear setback requirement in the DCP. The submissions are not supported in this regard.

- **Outlook / views**

Concerns were raised with respect to impacts on the outlook and view from 78 Macmillan Street due to non-compliance with the side boundary setback controls and FSR control.

Comment:

View loss has been discussed in detail under clause 3.4.3 Maintenance of Views in this report. In summary, the proposal is considered to maintain a reasonable sharing of views, despite the non-compliances identified above.

- **Floor space ratio**

Concerns were raised with the proposed non-compliance with the floor space ratio development standard, including impacts caused by the size of the dwellings such as shading, and visual impacts.

Comment:

Floor space ratio is discussed in detail under clause 4.6 in this report. In summary, the proposed variation to the FSR development standard is supported, and the impacts of the development are not considered to be unreasonable. The development maintains significant setbacks at the upper level in particular to the rear neighbours, which sufficiently mitigates privacy and solar access concerns. Overall, in terms of bulk and scale, the proposal will be very similar in design and scale to the neighbouring dwelling to the west, and is considered to be generally consistent with the existing character and scale of development in the area, and consistent with the FSR envisaged by the DCP under clause 4.1.3 Floor Space Ratio.

- **Height**

Concerns were raised with the height of the roof, and resulting impacts on solar access, and visual impacts.

Comment:

The proposal complies with the 8.5m height limit, and with the wall height limits in the DCP. As discussed above, the proposal also complies with solar access requirements, and is not considered to be unreasonable in terms of bulk and scale given the size and scale of neighbouring buildings in the immediate vicinity.

- **Side and rear setbacks**

Concerns were raised with regard to the proposed side and rear setbacks, and resulting impacts included limited landscaping and loss of breeze, visual impacts, and streetscape impacts.

Comment:

The amendments to the plans have increased the side and rear setbacks at the upper level. The



rear setback at the upper level is now compliant with the 8m requirement, and the side setbacks, although still non-compliant based on the wall heights, still maintain significant setbacks both the side boundaries and the neighbouring buildings to the east and west. The proposal is not considered to have unreasonable breezes, visually or on the streetscape. Landscaped area is compliant with the minimum requirements of the DCP also. The submissions are not supported in this regard.

## REFERRALS

| Internal Referral Body | Comments  |
|------------------------|---|
| Landscape Officer      | <p>This application is for the demolition of an existing residential dwelling, and the construction of a new residential dwelling with double garage.</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"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping</li> </ul> <p>A Landscape Plan is provided with the plan and proposed works include the in-ground planting of trees, shrubs and groundcovers.</p> <p>The Statement of Environment Effects provided with the application notes that some existing trees have been previously been removed under a separate approval. The Architectural Plans indicate that additional trees/hedge screen planting is to be removed as a result of the proposed dwelling. This hedge is likely to be impacted by the development and construction works, which would therefore necessitate its removal. As this hedge is a grouping of more than two trees and is above 2.5m in height, they do not require Council's approval for removal.</p> <p>It is noted however that the existing hedge provides valuable screening and privacy between the existing dwelling and adjoining property to the east. It is therefore required that these hedges be replaced in order to provide additional screening and privacy between the two dwellings into the future. This replacement planting is necessary to satisfy condition 4.1.5 Objective 3, which seeks "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and surrounding area". The Landscape Plans currently propose <i>Convolvulus</i> in this area, however this species would not provide adequate screening and privacy as required. It is therefore recommended that these species be replaced with a screening hedge or trees, capable of reaching a minimum height of 3m at maturity.</p> <p>For a similar reason, the existing hedging located on the western boundary at the front of the property shall be retained to ensure</p> |

| Internal Referral Body                                    | Comments  |
|---|---|
|   | <p>screening and privacy is maintained between the adjoining properties. The current Architectural Plans indicate that these trees/hedges are to be retained, and shall be protected accordingly. The protection of this hedge, alongside the existing street tree located within the road reserve, is necessary to comply with not only control 4.1.5, but also 3.3.2, which seeks to "protect and enhance the scenic value and character that trees provide". Although the proposed works are clear of the existing street tree, it is important to ensure that it is protected during the transportation of materials to and from site.</p> <p>Concern is also raised with the proposed use of <i>Fraxinus oxycarpa</i>, which is an exotic species. This tree shall be replaced by a locally native alternative in accordance with control 3.3.1, which states "landscaped areas must be capable of supporting new native tree species that are typically expected to reach a mature height of 10m".</p> <p>The landscape component of the proposal is therefore accepted subject to the protection of existing trees and vegetation, and the completion of landscape works as proposed on the Landscape Plans, inclusive of trees species changes and the addition of screen planting.</p> |
| NECC (Development Engineering)                            | <p>The existing driveway crossing is to remain. The proposed drainage design is satisfactory.</p> <p>No objection to approval, subject to conditions as recommended.</p>  |
| NECC (Stormwater and Floodplain Engineering – Flood risk) | <p>This property is not tagged as flood affected, however it should be noted that the Manly Lagoon Flood Study (2013) did not map overland flow in this area.</p> <p>No flood related objections, but refer to Development Engineering comments.</p>  |

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

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP 55 - Remediation of Land

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

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1171170S).

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

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

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

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

#### Comment:

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

### Manly Local Environmental Plan 2013

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

#### Principal Development Standards

| Standard             | Requirement             | Proposed                | % Variation | Complies |
|----------------------|-------------------------|-------------------------|-------------|----------|
| Height of Buildings: | 8.5m                    | 8.4955m                 | N/A         | Yes      |
| Floor Space Ratio    | FSR: 0.45:1 (163.17sqm) | FSR: 0.51:1 (184.92sqm) | 13.3%       | No       |

#### Compliance Assessment

| Clause                                  | Compliance with Requirements |
|---|------------------------------|
| 4.3 Height of buildings                 | Yes                          |
| 4.4 Floor space ratio                   | No                           |
| 4.6 Exceptions to development standards | No                           |
| 6.2 Earthworks                          | Yes                          |
| 6.4 Stormwater management               | Yes                          |
| 6.8 Landslide risk                      | Yes                          |
| 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:                            | 0.51:1            |
| Percentage variation to requirement: | 13.3%             |

##### 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:

- Consistency with established character of the area in terms of bulk and scale,
- In consideration of the established character of the area the the coordination of the orderly and economic use and development of the land will most appropriately be achieved by supporting variations to the relevant development standards,
- As a general principle, the highest and best economic use of land which has been identified as appropriate for residential development, will conversely act to preserve the character of the area.
- Undersized nature of lot, and consistent with requirements of clause 4.1.3 Floor Space Ratio of the DCP in this regard
- Minimal adverse environmental impacts on the surrounding area,
- Consistency with the relevant objectives of clause 4.3 and the zone

These arguments are generally agreed with. It is considered that the overall bulk and scale of the dwelling will be generally consistent with the established character of the area, and particularly with the

existing dwellings to either side. Importantly, it is also consistent with clause 4.1.3 of the DCP, which states that *"The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3)."* This clause states that variations may be considered based on a lot size of up to 500sqm. Basing the proposed floor space on a 500sqm lot size gives an FSR calculation of 0.37:1, which falls well under the maximum 0.45:1 requirement.

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 proposal is generally consistent in terms of bulk and scale with other nearby development, including the adjacent neighbours to the east and west. There is no specific desired future character statement, however, the proposal is considered to be generally consistent with the relevant controls (as assessed throughout this report). In particular the DCP envisages dwellings in this area of a floor space ratio that would be considered on lots of 500sqm under clause 4.1.3. As such, the proposal is considered to be generally consistent with the desired future character of

the area.

*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:

There are no identified important landscape or townscape features that the development will obscure. The proposal will obscure some district views from the neighbours to the rear as discussed in this report, but this view loss is not considered unreasonable in the circumstances of the site.

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

Comment:

The proposed design of the dwelling is generally consistent with other newer development in the area, particularly the adjacent neighbour to the west. Significant areas of landscaping will be maintained in front and rear setbacks, and the front setback will be improved in this regard through the removal of the existing buildings located there. The proposal is consistent with this objective.

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

Comment:

Environmental impacts are considered to be sufficiently minimised, as discussed throughout this report. The proposal is not considered to result in unreasonable impacts to neighbours or the public domain, and is of a scale generally consistent with expectations for the site given the applicable controls.

*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 site is not in a business zone.

## **Zone objectives**

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

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

Comment:

The proposal will provide a single detached dwelling in accordance with this objective.

It is considered that the development satisfies this objective.



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

Comment:

The proposal will not prevent other land uses from taking place in the area.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

**Manly Development Control Plan**

Built Form Controls

| <b>Built Form Controls - Site Area:<br/>362.6sqm</b> | <b>Requirement</b>                        | <b>Proposed</b>    | <b>%<br/>Variation*</b> | <b>Complies</b> |
|--|---|--------------------|-------------------------|-----------------|
| 4.1.1.1 Residential Density and Dwelling Size        | Density: 1 dwelling per 500sqm            | 1 dwelling         | N/A                     | Yes             |
|  | Dwelling Size: 112sqm                     | 193.33sqm          | N/A                     | Yes             |
| 4.1.2.1 Wall Height                                  | W: 6.9m (based on gradient 1:15)          | 6.2m               | N/A                     | Yes             |
|  | E: 7.05m (based on gradient 1:11)         | 6.8m               | N/A                     | Yes             |
| 4.1.2.2 Number of Storeys                            | 2   | 2                  | N/A                     | Yes             |
| 4.1.2.3 Roof Height                                  | Height: 2.5m                              | 2.06m              | N/A                     | Yes             |
|  | Pitch: maximum 35 degrees                 | 22.5 degrees       | N/A                     | Yes             |
| 4.1.4.1 Street Front Setbacks                        | 6m  | 5.5m               | 8.33%                   | No              |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | W: 2.1m (based on wall height)<br>E: 2.3m | W: 1.8m<br>E: 1.8m | 14.3%<br>21.7%          | No<br>No        |
|  |   |                    |                         |                 |

|  |   |                      |            |          |
|--|---|----------------------|------------|----------|
|  | Windows: 3m                                     | W: 1.65m<br>E: 1.65m | 45%<br>45% | No<br>No |
| 4.1.4.4 Rear Setbacks  | 8m  | 3.281m               | 59%        | No       |
| 4.1.5.1 Minimum Residential Total Open Space Requirements<br>Residential Open Space Area: OS 3 | Open space 55% of site area                     | 51.1%<br>(185.4sqm)  | 7.1%       | Yes      |
|  | Open space above ground 25% of total open space | 2.5% (4.6m)          | N/A        | Yes      |
| 4.1.5.2 Landscaped Area  | Landscaped area 35% of open space               | 68.4%<br>(126.8sqm)  | N/A        | Yes      |
| 4.1.5.3 Private Open Space   | 18sqm per dwelling                              | 96sqm                | 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      | 6m                   | 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  | Yes                          | Yes                         |
| 3.4.2 Privacy and Security   | Yes                          | Yes                         |
| 3.4.3 Maintenance of Views   | Yes                          | Yes                         |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes                          | Yes                         |
| 3.5.1 Solar Access   | Yes                          | Yes                         |
| 3.5.3 Ventilation  | Yes                          | Yes                         |
| 3.5.5 Landscaping  | Yes                          | Yes                         |
| 3.7 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   | No                           | 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  | Yes                          | Yes                         |

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| Storeys & Roof Height)   |                              |                             |
| 4.1.3 Floor Space Ratio (FSR)  | Yes                          | Yes                         |
| 4.1.4 Setbacks (front, side and rear) and Building Separation              | No                           | Yes                         |
| 4.1.5 Open Space and Landscaping   | No                           | Yes                         |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) | Yes                          | Yes                         |
| 4.1.8 Development on Sloping Sites   | Yes                          | Yes                         |
| 4.4.1 Demolition   | Yes                          | Yes                         |
| 4.4.5 Earthworks (Excavation and Filling)                                  | Yes                          | Yes                         |

#### Detailed Assessment

#### **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:

Submissions were received from neighbours to the rear at 78 and 80 Macmillan Street. The views affected are district views, mainly comprised of tree canopy to the north, and also contains dwellings, power lines and street lights. No water views are available. In the context of these principles, the views are not considered to be highly valuable.

*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 views from number 78 are obtained across the rear boundary, and from number 80 mainly across the rear north eastern corner of the site. The views are obtained from upper level bedroom windows, both sitting and standing, and not from the main living areas.

*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:

From number 78, the new dwelling will obscure a substantial portion of the view, while maintaining corridors to the east and west of the new dwelling. The view impact will be moderate to severe.

From number 80, the view impact will be less than on number 78, as there is less view to be lost. The new dwelling will have a moderate impact.

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

Comment:

The proposal does not comply with a number of relevant controls, including floor space ratio, and side setbacks. The view loss has been assessed above as being up to the 'severe' range. However, this is as a result of the existing dwelling on site being a small single level dwelling, allowing for views straight above the dwelling and through the middle of the site. There is no reasonable expectation to retain these views given the 8.5m height limit applicable to the site. The proposal is compliant with the height control.

The non-compliance proposed with the FSR and side setback controls is considered to be of more relevance to the impact on views in this case. In this regard, the proposed FSR falls well within a variation envisaged by clause 4.1.3 of the DCP for small lots. The side setbacks of the upper level do not comply, being up to 500mm non-compliant on the eastern side, and 300mm on the western side (noting that these non-compliances are worst case and are based on the wall heights, which change as the land slopes). However, despite this non-compliance, the proposal will still maintain large view corridors to either side for the upper level windows of number 78, having a gap of 5.5m between the proposal and its western neighbour, and a minimum of 3.4m to the eastern neighbour. Given the relative lack of value of the view (in the context of these principles), the small size of the site, and the location of the new dwelling generally in the centre of the site as is expected, the proposal is not considered unreasonable in this regard. Significant view corridors will be retained from number 78.



From number 80, due to the viewing angle diagonally across the subject site, the side setbacks do not impact significantly on view loss. The element mainly causing view loss in this regard is the height, which as discussed above is compliant with the 8.5m limit. Again, given the limited nature of the view, and the proposed location of the new dwelling generally in the centre of the subject site, the proposal is not considered to cause unreasonable view impacts.

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.

#### 4.1.3 Floor Space Ratio (FSR)

The control states that *"On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).*

*The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3)."*

The site falls within Area I on the Lot Size Map, and as such, this control allows for calculation of the FSR based on a lot size of 500sqm. This would allow for floor space of up to 225sqm (0.45:1). The proposed amended plans have a floor space of 184.92sqm, resulting in an FSR under this clause of 0.37:1, which is under the maximum 0.45:1 allowed for by clause 4.4 of the LEP.

This has been taken into consideration in the discussion under clause 4.6 in this report.

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

##### Description of non-compliance

The proposal includes a minimum front setback of 5.5m at the upper level, which is less than the minimum 6m requirement. The proposed side setbacks of the upper level are also non-compliant, being setback 1.8m from the side boundaries on both sides (requirement of 2.1m on the western side and 2.3m on the eastern side, based on the wall height). The rear setback is compliant at the upper level with the 8m minimum requirement, but is non-compliant at the lower level where the rear alfresco is setback 3.281m, and the wall of the lower level 6.26m. The proposed side facing windows are also 1.8m from the boundary (3m requirement).

##### 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 result in the demolition of existing outbuildings in the front setback area, allowing for

planting to enhance the streetscape and landscaped character. The reduced front setback at the upper level will be compensated for by an increased setback to the lower level (7m to the garage), and also by the proposed front balcony which creates a large setback to the upper level of 9m in the eastern front corner of the building. The non-compliance will not unreasonably detract from the streetscape given the existing character of buildings along Frenchs Forest Road.

*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:

Privacy is considered to be reasonably maintained by the proposal. The proposed upper level rear facing windows are setback a minimum of 8m in accordance with the rear setback control. At the ground level, the subject site is located significantly lower than the neighbours to the rear, and the existing rear boundary fence will provide sufficient screening between neighbours. The side facing windows, while non-compliant will not cause unreasonable privacy impacts given the setbacks to neighbouring dwellings. To the west the separation between buildings will be 5.5m, and to the east, the dwelling at number 105 Frenchs Forest Road is setback behind the proposed dwelling on the subject site.

Views are considered to be maintained to a reasonable degree, as discussed under Clause 3.4.3 Maintenance of Views in this report.

Adequate space will be maintained between buildings given the locations and setbacks of neighbouring dwellings, and the proposal will improve traffic safety by providing for an onsite turning area.

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

Comment:

A degree of flexibility is considered appropriate given the small size of the site.

*Objective 4) To enhance and maintain natural features by:*

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

Comment:

The proposal includes a significant amount of landscaped area and deep soil zones. A previously approved CDC for a swimming pool in the rear yard area has been withdrawn by the applicants. The removal of existing buildings in the front setback area will enable planting in that area to enhance the streetscape.

*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.

#### **4.1.5 Open Space and Landscaping**

Description of non-compliance

The proposal provides for 185.4sqm of open space (51.1%). The control requires 55% (199.42sqm) of the site to be open space.

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:

There are no particularly important landscape features or remnant populations on site. The proposal provides for significant landscaped area in both the front and rear setback areas. Council's Landscape Officer has recommended conditions to retain and/or replace existing hedging along the eastern and western boundaries.

*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 proposal provides significant landscaped areas in both the front and rear setbacks. Planting has also been proposed. This was assessed by Council's Landscape Officer, who raised no objections to the proposal, subject to conditions of consent (see Referrals section of this report).

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

Comment:

The proposal is considered to be generally consistent with controls relating to privacy, sunlight and

views, as discussed in this report.

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

Comment:

Council's Development Engineer has assessed the drainage plan and is satisfied stormwater will be dealt with in accordance with the policy. Although the proposal falls short of the open space requirement, the amount of landscaped area that forms part of the open space measurement is well above the minimum requirements, enabling sufficient water infiltration.

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

Comment:

Subject to conditions provided by Council's Landscape Officer this objective will be met.

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

Comment:

The site is not within an identified wildlife corridor. The proposal will maintain significant areas of soft landscaped area.

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**

## **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 \$6,248 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$624,820.

## **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.

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 DA2021/0129 for Demolition works and construction of a dwelling house on land at Lot 1 DP 1125216, 107 Frenchs Forest Road, SEAFORTH, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp |          |                            |
|---|----------|----------------------------|
| Drawing No.   | Dated    | Prepared By                |
| 20225/12 Sheet 3/16 Issue M                         | 15-07-21 | Accurate Design & Drafting |
| 20225/12 Sheet 4/16 Issue M                         | 15-07-21 | Accurate Design & Drafting |
| 20225/12 Sheet 5/16 Issue M                         | 15-07-21 | Accurate Design & Drafting |
| 20225/12 Sheet 6/16 Issue M                         | 15-07-21 | Accurate Design & Drafting |
| 20225/12 Sheet 7/16 Issue M                         | 15-07-21 | Accurate Design & Drafting |
| 20225/12 Sheet 8/16 Issue M                         | 15-07-21 | Accurate Design & Drafting |
| 20225/12 Sheet 9/16 Issue M                         | 15-07-21 | Accurate Design & Drafting |

| Reports / Documentation – All recommendations and requirements contained within: |              |                       |
|--|--------------|-----------------------|
| Report No. / Page No. / Section No.  | Dated        | Prepared By           |
| BASIX Certificate 1171170S_02  | 30 June 2021 | Abeaut Design Pty Ltd |

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

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

| Landscape Plans              |          |                            |
|------------------------------|----------|----------------------------|
| Drawing No.                  | Dated    | Prepared By                |
| 20225/12 Sheet 10/16 Issue M | 15-07-21 | Accurate Design & Drafting |

| Waste Management Plan |            |             |
|-----------------------|------------|-------------|
| Drawing No/Title.     | Dated      | Prepared By |
| Waste Management Plan | 11/02/2021 | K Palmer    |

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 Response Referral | Not dated |

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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 \$6,248.20 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 \$624,820.00.

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](http://www.northernbeaches.nsw.gov.au)

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

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

## 6. **Security Bond**

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

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

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

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

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

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

The applicant is to lodge a bond of \$1,000 as security against any damage to Council's stormwater drainage infrastructure works as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

## 8. **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.

## 9. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management Policy and generally in accordance with the concept drainage plans prepared by VNK Consulting Pty Ltd, drawing number 070221-01 Issue A, dated 07/02/2021. 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. Sections through the OSD tank.
2. Design and details of the orifice plate.
3. Trash screen over the outlet from the OSD tank,
4. Connection details to the Council pipeline using a 'Flowcon Conconnect' fitting or similar.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

10. **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.

11. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the stormwater connection from the site into Council's drainage pipeline in Frenchs Forest Road which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au) > Council Forms > Stormwater Drainage Application Form.

The plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for Civil Engineering.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

The drainage plans must address the following:

1. Connection details to the Council pipeline are to via a 'Flowcon Conconnect' fitting or similar.
2. The Council pipeline is to be located by a service locating contractor or registered surveyor with details provided on the design plans.



3. All services in the nature strip to be located and shown on the plans.

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

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

12. **Waste Management Plan**

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

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

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

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. **Surrender of Consent**

The applicant shall surrender to Council Development Consent No: 200159/01 (Council ref: CDC2021/0038) in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consent applying the site (ref s80A (5) EPAA & d97 EPA Reg).

15. **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](http://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****16. Protection of Existing Street Trees**

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

As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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

Reason: Tree protection.

**17. Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

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

Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

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

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

**18. Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

**19. Road Reserve**

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

Reason: Public safety.

**20. 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.

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

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

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

**22. Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

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

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE  
OCCUPATION CERTIFICATE****23. Landscape Completion**

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

- i) substitute the proposed *Fraxinus oxycarpa* with a locally native canopy tree capable of reaching a minimum height of 10m at maturity. Suggested alternatives include: *Angophora costata*, *Banksia integrifolia* or *Eucalyptus haemastoma*,
- ii) substitute the proposed *Convolvulus* with a screening shrub capable of reaching a minimum height of 3m at maturity. Suggested alternatives include: *Acmena smithii* 'Minor', *Callistemon citrinus* 'Kings Park Special' or *Syzygium spp* (to match existing hedge on western boundary).

Tree planting shall be located within a 9m<sup>2</sup> deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings, and other trees.

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



Native tree planting species shall be selected from Council's list, specifically the *Native Plant Species Guide - Manly Ward*: [www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide](http://www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide).

The selected screen planting is to comprise of native species capable of attaining a height of 3m at maturity. 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.

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

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA), 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 as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user over the on-site storm water detention as to user is to be submitted.

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

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

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

25. **Landscape Maintenance**

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

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

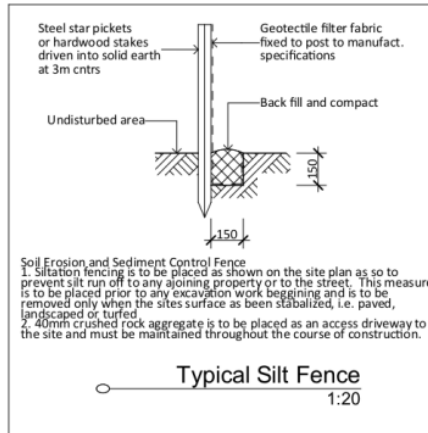
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.



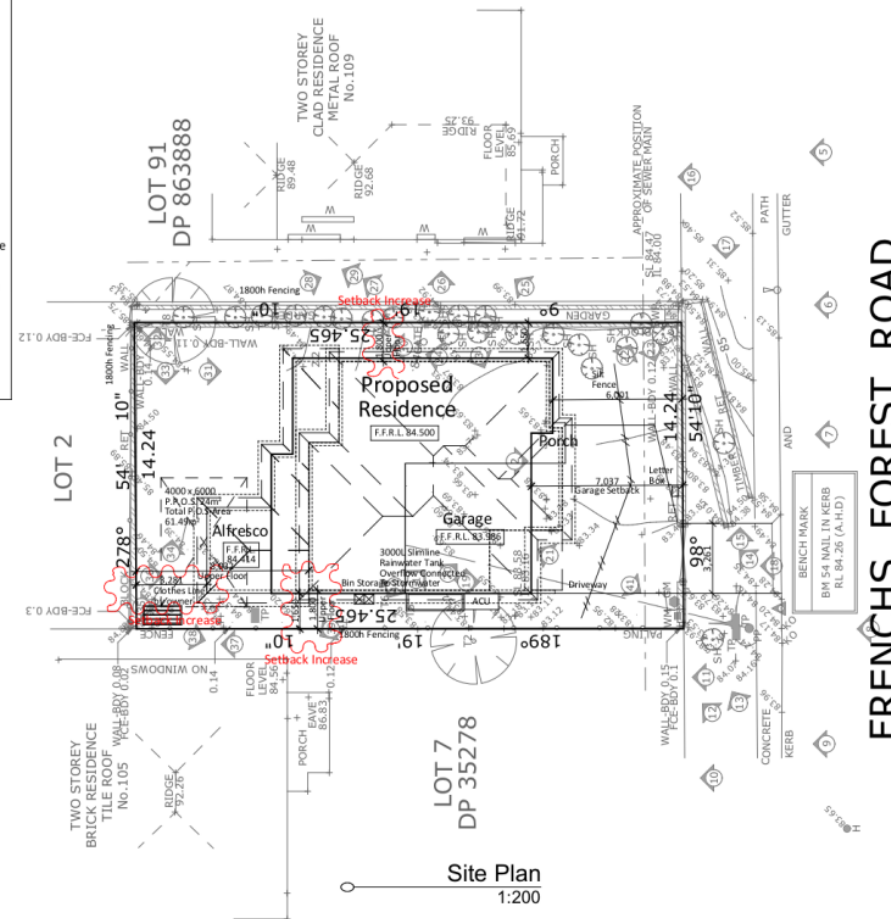


Artisan BY ICON HOMES



**Note:**  
Landscape Area: 139.86m<sup>2</sup> - 38.57%  
Private Open Space: 61.49m<sup>2</sup>  
Open Space: 191.49m<sup>2</sup> - 52.81%  
Floor Space Ratio: 184.92m<sup>2</sup> - 50.99%

FSR Reduced



Lot 1  
362.59m<sup>2</sup>  
DP: 1125216



issue: M  
drawing: 20225-12  
date: 15-07-21  
sheet: 9/16  
paper: A3  
lot: 1  
dp: 1125216

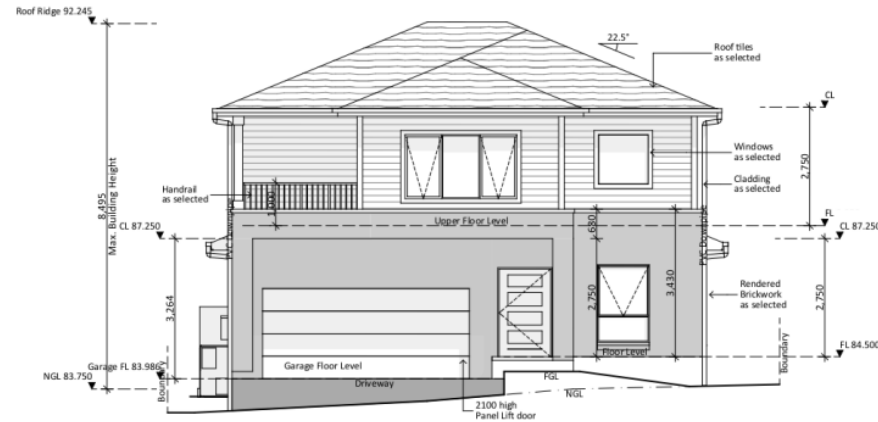
Proposed Residence  
#107 Frenchs Forest Road, Seaforth  
Icon Job Number: J0/818

ACCURATE  
design & drafting  
info@accuratedesign.com.au  
02 4647 2552

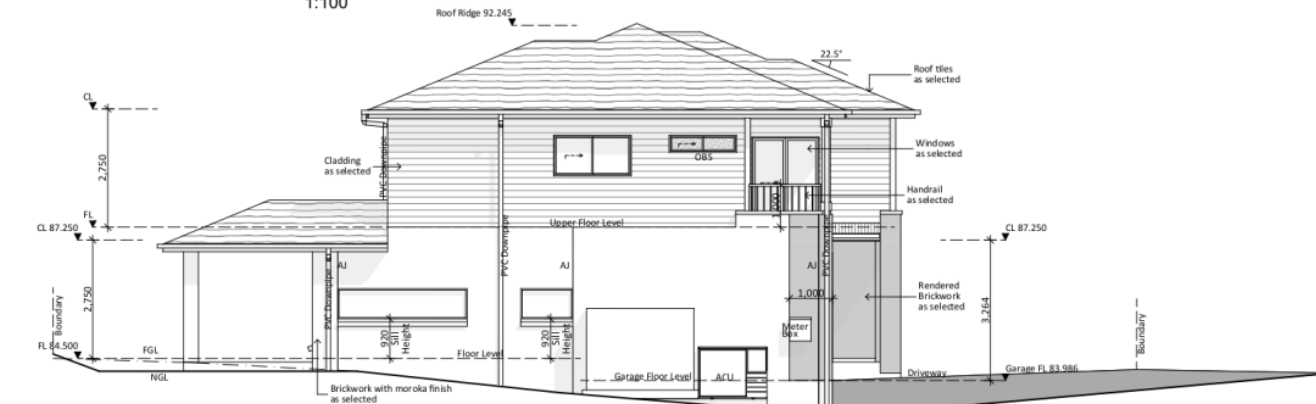
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**Legend:**  
ACU - Air Conditioning Unit  
AJ - Articulation Joint  
CL - Ceiling Level  
FGL - Finish Ground Line  
FL - Floor Level  
HWS - Hot Water System  
NGL - Natural Ground Line  
OBS - Obscure  
DP - Downpipe  
RW - Retaining Wall



Front Elevation  
1:100



Side Elevation  
1:100

issue: M drawing: 20225-12 15-07-21 date: 5/16 A3 lot: 1125216  
sheet: 1  
paper: 1125216

note: all works to be carried out in conjunction with the construction notes on sheet 2

Proposed Residence  
#107 Frenchs Forest Road, Seaforth  
Icon Job Number: J0/818

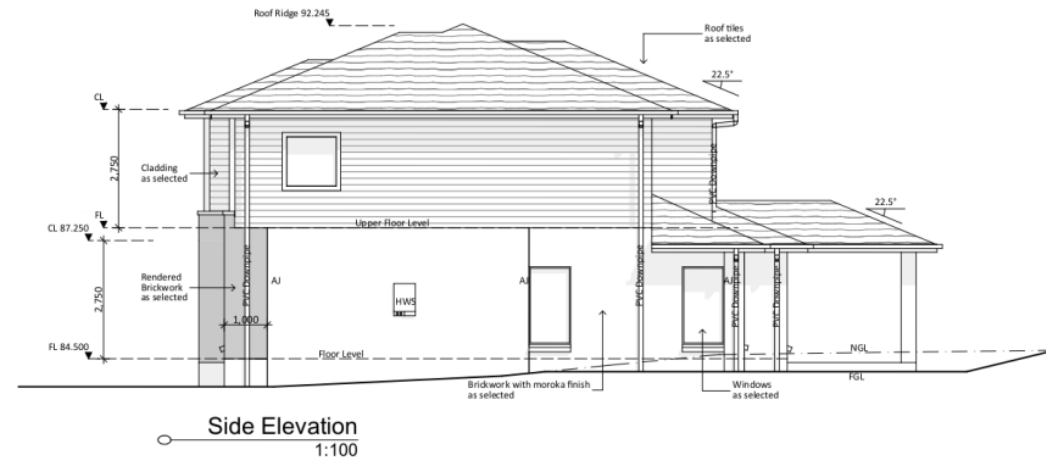
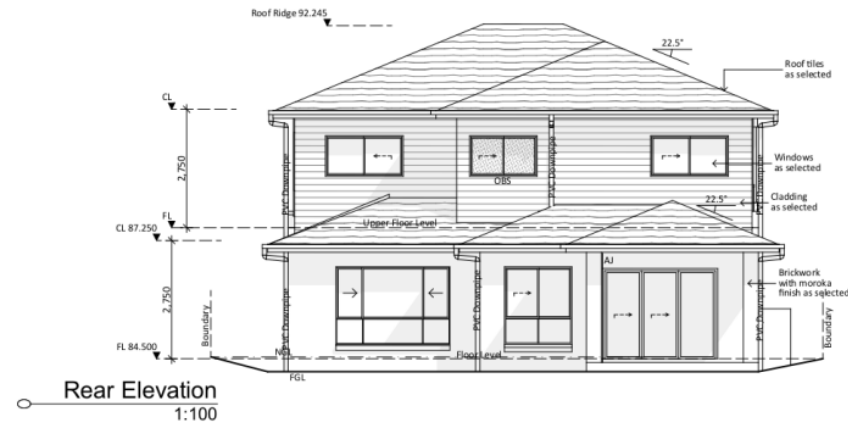
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**Legend:**  
ACU - Air Conditioning Unit  
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issue: M  
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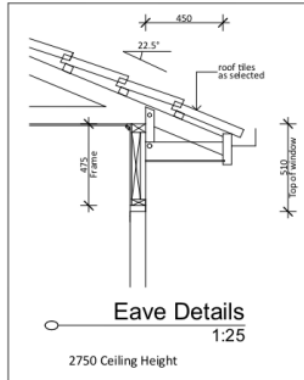
note: all works to be carried out in conjunction with the construction notes on sheet 2

Proposed Residence  
#107 Frenchs Forest Road, Seaforth  
Icon Job Number: J0/818

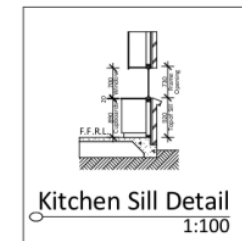
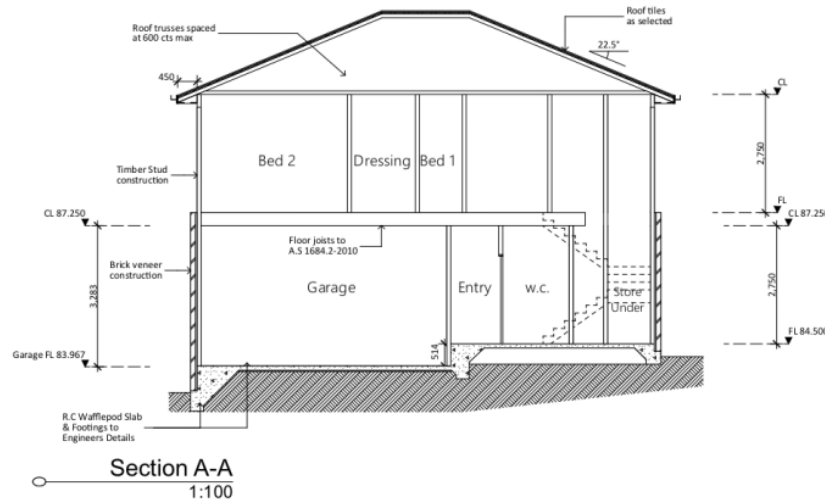
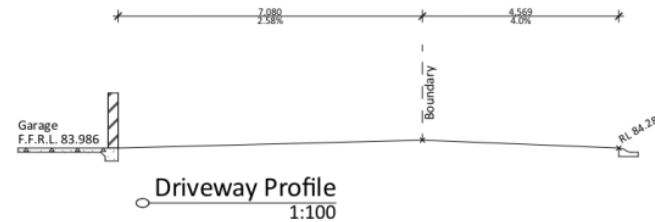
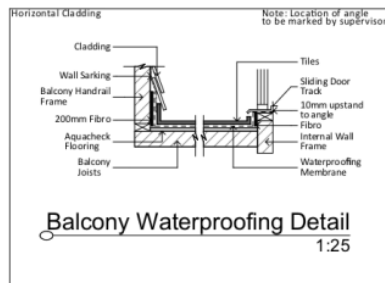
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**Legend:**  
ACU - Air Conditioning Unit  
AJ - Articulation Joint  
CL - Ceiling Level  
FGL - Finish Ground Line  
FL - Floor Level  
HWS - Hot Water System  
NGL - Natural Ground Line  
OBS - Obscure  
DP - Downpipe  
RW - Retaining Wall



issue: M drawing: 20225-12 date: 15-07-21 lot: 1  
sheet: 7/16 paper: A3 dp: 1125216

note: all works to be carried out in conjunction with the construction notes on sheet 2

Proposed Residence  
#107 Frenchs Forest Road, Seaforth  
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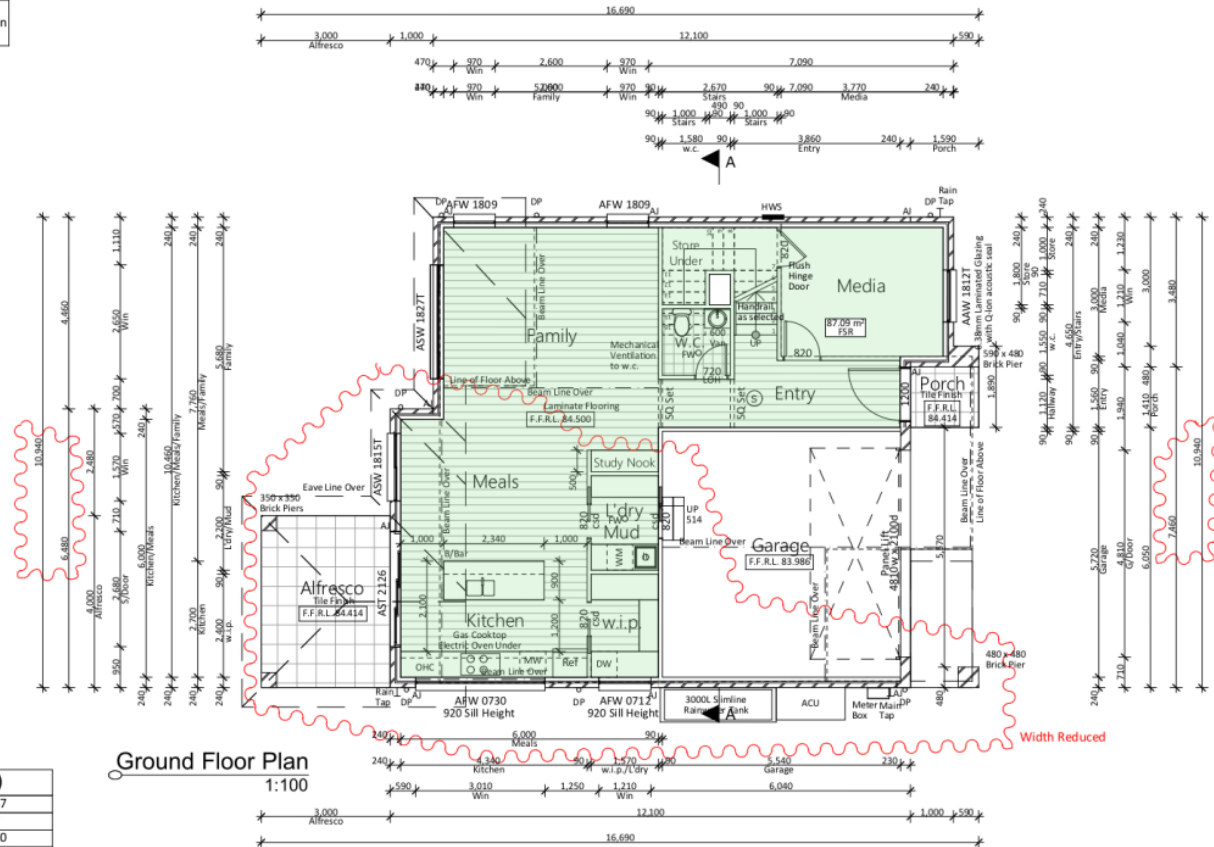


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Note:  
2,340 high internal doors

Note:  
R4.1 Ceiling Insulation  
R2.5 Wall Insulation



| Floor Area (m2) |                             |
|-----------------|-----------------------------|
| Living          | 98.47                       |
| Balcony         | 4.77                        |
| Alfresco        | 12.00                       |
| Garage          | 35.45                       |
| Upper Living    | 102.42                      |
|                 | <b>253.11 m<sup>2</sup></b> |

Ground Floor Plan  
1:100

Legend:

- ACU - Air Conditioning Unit
- AIJ - Articulation Joint
- B/Bar - Breakfast Bar
- DP - Downpipe
- DW - Dishwasher
- Ens - Ensuite
- F/P - Fire Place
- FW - Floor Waste
- HWS - Hot Water System
- L - Linen
- LC - Laundry Chute
- LDH - Lift off Hinge
- LI - Laundry Tub
- MH - Manhole
- MW - Microwave Oven
- OBS - Obscure
- OHC - Over Head Cupboard
- P - Pantry
- R - Robe
- RS - Rolled Hollow Steel
- S - Smoke Alarm
- Shr - Shower
- TR - Towel Rail
- Van - Vanity
- w.l. - Walk in Linen
- w.l.p. - Walk in Pantry
- w.c. - Wash Closet
- WM - Washing Machine

issue: M drawing: 20225-12 15-07-21 date: 3/16 paper: A3 lot: 1125216

note: all works to be carried out in conjunction with the construction notes on sheet 2

Proposed Residence  
#107 Frenchs Forest Road, Seaforth  
Icon Job Number: J0/818

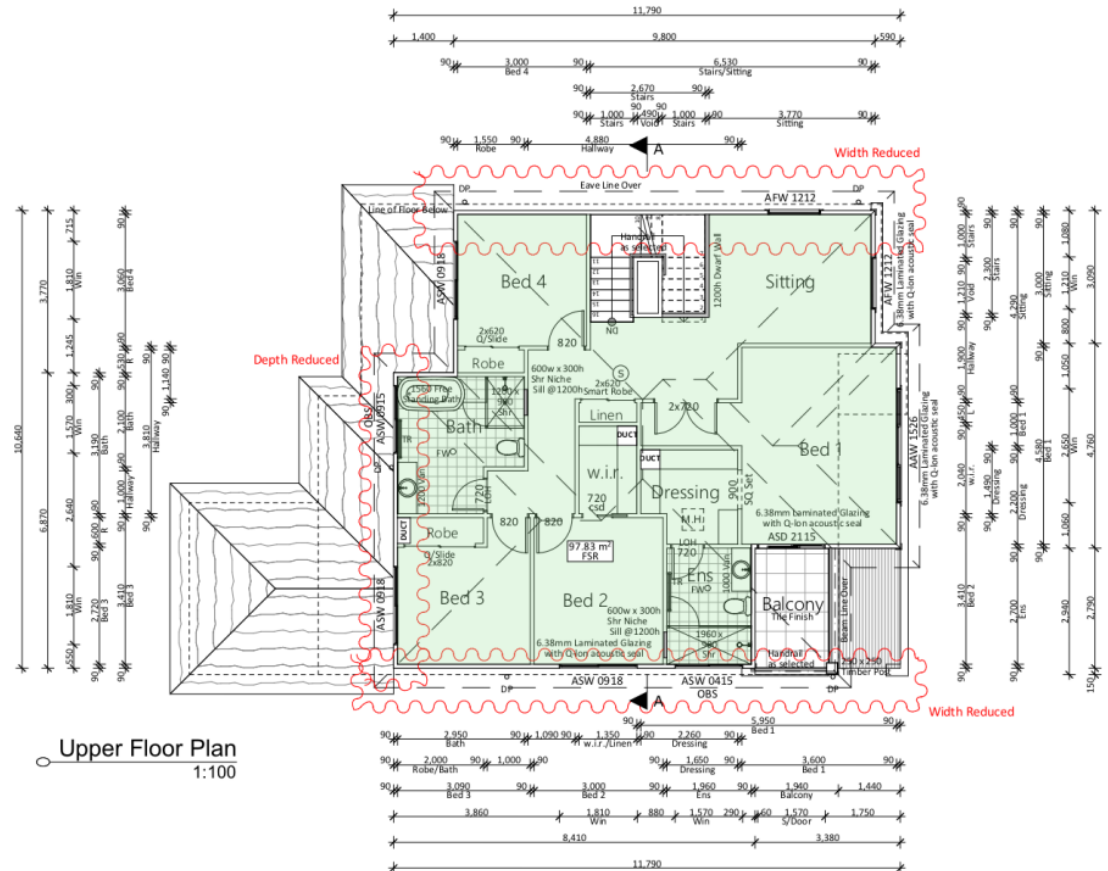
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Note:  
2,340 high internal doors

Note:  
R4.1 Ceiling Insulation  
R2.5 Wall Insulation



| Floor Area (m2) |                             |
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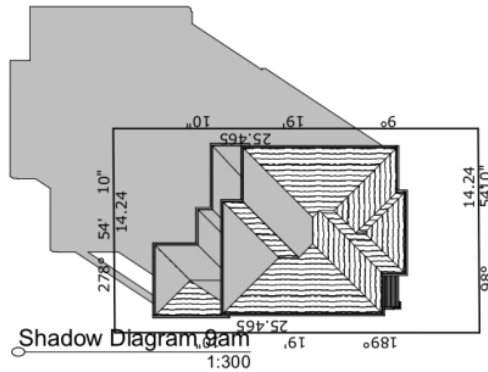
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ACU - Air Conditioning Unit  
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issue: M drawing: 20225-12 date: 15-07-21 lot: 1125216  
sheet: 4/16 paper: A3  
note: all works to be carried out in conjunction with the construction notes on sheet 2

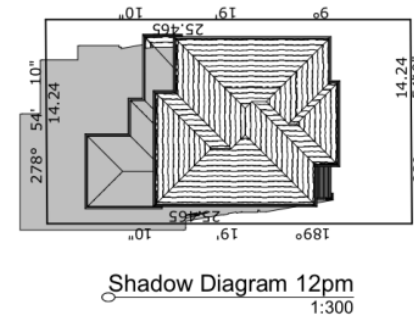
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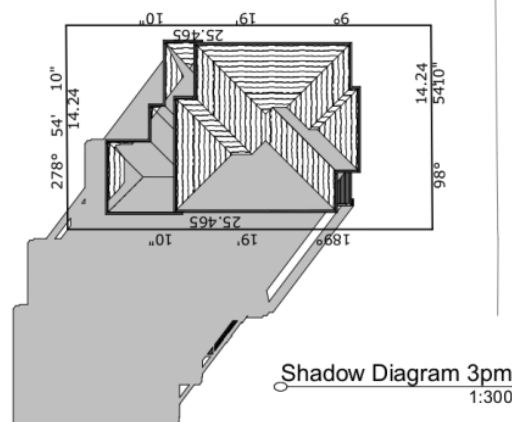
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FRENCHS FOREST ROAD



FRENCHS FOREST ROAD



FRENCHS FOREST

Lot 1  
362.59m<sup>2</sup>  
DP: 1125216



issue: M  
drawing: 20225-12  
sheet: 14/16  
date: 15-07-21  
paper: A3  
lot: 1  
dp: 1125216

Proposed Residence  
#107 Frenchs Forest Road, Seaforth  
Icon Job Number: J0/818

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**Amended Written Request under Clause 4.6  
Exceptions to Development Standards of  
Manly Local Environmental Plan 2013 - DA  
2021/0129**

**Lot 1 DP 1125216, No 107 Frenchs Forest Road,  
SEAFORTH**

---

Prepared For:



Prepared By:



July 2021

107 Frenchs Forest Road, SEAFORTH

## Contents

|   |      |                    |
|---|------|--------------------|
| <b>1. INTRODUCTION</b> .....  | 3    | Field Code Changed |
| 1.1 STATUTORY OBLIGATIONS OF THE APPLICANT AND COUNCIL .....  | 3    | Field Code Changed |
| FIGURE 1 – FLOOR SPACE MAP .....  | 5    | Field Code Changed |
| 1.2 THE SUBJECT LAND .....  | 6    | Field Code Changed |
| 1.3 PROPOSED DEVELOPMENT.....   |      | Field Code Changed |
| 76  |      |                    |
| 1.4 ZONING .....  |      | Field Code Changed |
| 76  |      |                    |
| <b>2 PROVISIONS OF CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS</b> .....   | 76   | Field Code Changed |
| 2.1 CLAUSE 4.6(4)(A)(i) – ADEQUATE ADDRESS OF MATTERS UNDER CLAUSE 4.6(3)   |      | Field Code Changed |
| 76  |      |                    |
| 2.2 CLAUSE 4.6(1) - OBJECTIVES.....   |      | Field Code Changed |
| 109   |      |                    |
| 2.3 REQUIREMENTS OF EXCEPTION UNDER CLAUSE 4.6 .....  |      | Field Code Changed |
| 109   |      |                    |
| <b>3 OBJECTIVES OF DEVELOPMENT STANDARDS</b> .....  | 1110 | Field Code Changed |
| 3.1 CLAUSE 4.4 – FLOOR SPACE RATIO .....  |      | Field Code Changed |
| 1110  |      |                    |
| <b>4 JUSTIFICATION FOR NON-COMPLIANCE WITH THE DEVELOPMENT STANDARDS</b> .....  | 1211 | Field Code Changed |
| 4.1 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY<br>IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(A))? ..... |      | Field Code Changed |
| 1211  |      |                    |
| 4.2 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY<br>CONTRAVENING THE DEVELOPMENT STANDARD (CLAUSE 4.6(3)(B))? 1311      |      | Field Code Changed |
| <b>5 CONCLUSION</b> .....   | 1413 | Field Code Changed |



## 1. Introduction

A development application DA 2021/0129 was lodged with Northern Beaches Council for the demolition of the existing dwelling and the construction of a two-storey dwelling at 107 Frenchs Forest Road, SEAFORTH. By letter dated 17 June 2021, the Council requested amendments to the plans to essentially reduce the floor area of the proposed dwelling and required a revised Clause 4.6 variation request to justify that the proposal was in the public interest.

This amended report is based on amended plans submitted to Council and comprises a written request from the Applicant under clause 4.6 of Manly Local Environmental Plan 2013 ("LEP 2013") that seeks to justify the contravention by the new Proposed Development of the development standard for the floor space ratio (FSR) under clause 4.4 of LEP 2013. Clause 4.4(2) states:

*(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

Based on an FSR of 0.45:1, the floor area of the dwelling should be 163.17m<sup>2</sup>. The floor area of the dwelling is 184.92m<sup>2</sup>, which equates to an FSR of 0.51:1 or 21.75m<sup>2</sup> more than that permitted by Clause 4.4. If based on Clause 4.1.3.1 of the DCP, which we have requested in the Clause 4.6 Variation Request be considered for the matters raised in this request and based on the reference to the clause below, the floor area is 3.63m<sup>2</sup> above the 0.50:1, which equates to an FSR of 0.51:1. In terms of the above, at 0.45:1 the percentage variation is 13.3% and at 0.50:1, it is 2%. As the percentage of non-compliance is greater than 10%, based on 0.45:1, the application must be considered by the Planning Panel.

### 1.1 STATUTORY OBLIGATIONS OF THE APPLICANT AND COUNCIL

The authority established within a judgement in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, provides that a Cl4.6 variation need not establish that a development containing a variation provides a better or even neutral outcome for a development site compared with that which would be provided by a compliant development.

In light of this judgement, it is necessary to distinguish between the obligations of the applicant, and the obligations of Council. The applicant must address the matters required by cl4.6(3). Note however that for completeness and to assist Council in its assessment, this variation request has addressed cl4.6(3) and 4.6(4).

The consent authority need only be satisfied of the matters required within 4.6(4)(a), namely that the applicant has adequately addressed 4.6(3), and that the development is consistent with the objectives of the standard and the objectives of the zone.

The *Initial Action* judgement states that "the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl4.6(3)(a) and (b)".

The independent role for the consent authority is therefore to determine whether the proposed development will be consistent with the objectives of the standard and the objectives of the zone.

107 Frenchs Forest Road, SEAFORTH

This involves a consideration of the "development" in its entirety, not just the proposed variation. It is clear that the development meets the objectives of the standard and of the zone as discussed throughout this written request.

The responsibilities of the applicant had earlier been clarified within *Four2Five Pty Ltd v Ashfield Council* (2015) NSWCA 248. In addressing clause 4.6(3), the applicant must establish reasons that the variation should be supported, aside from the consistency of the development with the objectives of the standard and the objectives of the zone.

In *Wehbe V Pittwater Council* (2007) NSW LEC 827, Preston CJ set out the following 5 different ways in which an objection (variation) may be well founded:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
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;*
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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of points 2-5 above. The information contained within this written request directly addresses the third and fourth reason within the list above.

Note that although this request is structured to address 4.6(3) and 4.6(4)(a)(ii) individually, the report should be read in its entirety as fulfilling the applicant's obligations under 4.6(3).

Subclause (2) applies to the existing lot. It would be noted that development consent may be granted if the lot size is greater than 500m<sup>2</sup>. The existing lot has an area of 362.59m<sup>2</sup>. However, in respect of the Clause 4.6 request, essentially whilst Clause 4.1(2) & (3) is titled "minimum lot size" the contents of the clause do not actually restrict development if under 500m<sup>2</sup>. Clause 4.1(2) & (3) is a permissive clause, not a restrictive clause and the title does not prevail over the particulars.

The remainder of this report seeks to demonstrate that compliance with Clause 4.4 of MLEP 2015 is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard in this instance and that the proposal is in the public interest.

Clause 4.6(4) of MLEP 2013 states:

- (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*

107 Frenchs Forest Road, SEAFORTH

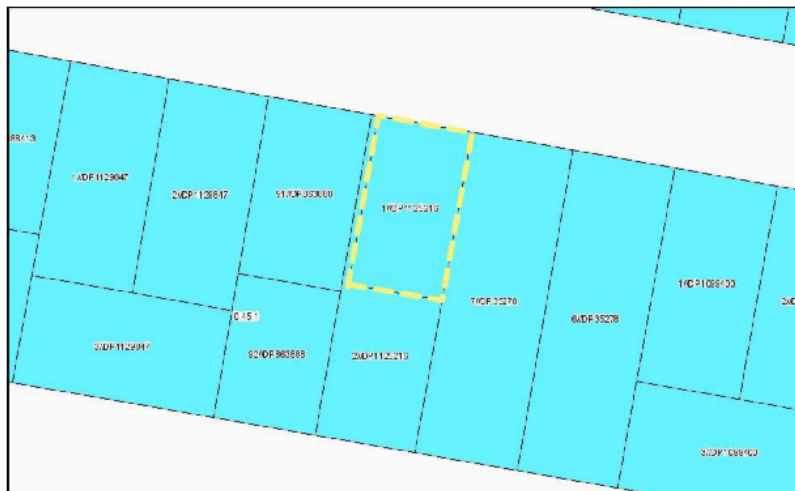
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Director-General has been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

It is considered that the public interest is better served as a consequence of the variation to the development standard of MLEP 2013 due to the area on non-compliance having regard to the public benefit of increased setbacks occasioned by the amended development proposal.

This report has been prepared to support a variation to the development standard of Clause 4.4 of Manly Local Environmental Plan 2013 (MLEP 2013). The submission should be read in conjunction with the Statement of Environmental Effects (SoEE) prepared by this firm.

The maximum FSR shown for the Floor Space Ratio Map referred to in clause 4.4(2) of LEP 2013 is 0.45:1 as shown on the extract of Map - Sheet FSR\_001 below in Figure 1.

FIGURE 1 - FLOOR SPACE MAP



The floor area of the dwelling is 184.92m<sup>2</sup> or 0.51:1. The proposed development proposes a floor space ratio greater than 0.45:1 provided by Clause 4.4. However, in accordance with Subclause 4.1.3.1, addressed below, a 0.50:1 applies. The variation in this instance is 2.0%. As stated above in Section 1, based on an FSR of 0.45:1, the floor area of the dwelling should be 163.17m<sup>2</sup>. The floor area of the dwelling is 184.92m<sup>2</sup>, which equates to an FSR of 0.51:1 or 21.75m<sup>2</sup> more than that permitted by Clause 4.4. If based on Clause 4.1.3.1 of the DCP, which we have requested in the Clause 4.6 Variation Request be considered based on the reference to the clause and other matters addressed in this request. The floor area is 3.63m<sup>2</sup> above the 0.50:1, which equates to an FSR of 0.51:1. In terms of the above, at 0.45:1 the percentage variation is 13.3% and at 0.50:1, it is 2%. As the percentage of non-compliance is greater than 10%, when based on 0.45:1, the application must be considered by the Planning Panel.

107 Frenchs Forest Road, SEAFORTH

Whilst this is a DCP provision and not subject to a Clause 4.6 variation request, nonetheless the Council has recognised that under certain circumstances, such as this proposal where the lot size has been reduced due to road widening, a more flexible approach should be considered for such lots. As such a variation is sought under 'Clause 4.6 - Exceptions to development standards' under MLEP 2013.

As noted above, the subject property is an undersized allotment. Subclause 4.1.3.1 of Manly Development Control Plan 2013 provides under the heading of Exceptions to FSR for undersized lots provides:

The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3).

- a) The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30.

The lot falls under Area I of the LEP Lot Size Map, which is based on 500m<sup>2</sup> lot size/site area. On this basis, under the LEP with an FSR of 0.45:1, the allowable FSR is 181.29m<sup>2</sup>. The proposed dwelling has a floor area of 184.92m<sup>2</sup>, which is 3.63m<sup>2</sup> over the allowable FSR or an FSR of 0.51:1, which is slightly more than the 50% control by 2.0%. However, as stated above, the proposed dwelling has a floor area of 21.75m<sup>2</sup> more than permitted by a 0.45:1 FSR control under Clause 4.4 of the LEP, which equates to a variation of 13.3%. It would be noted that to reduce the floor area of the dwelling below that previously submitted, there have been increased side and rear boundary setbacks proposed. These setbacks have increased the amenity for adjoining neighbours and more importantly reduced the bulk and scale of the dwelling.

In particular, the side boundaries have increased for the first storey to provide greater separation with neighbours and generally compliant with the DCP controls. The rear setback has also increased, noting the current setback from the rear neighbour is 2.31m, whilst the proposal is a 8.032m to the first floor.

The rear setback could be increased if the Council reduced the front setback. It is noted that the DCP control for front setbacks requires dwellings to respect the existing setbacks. It would be noted from Figure 2 below that there is no consistent front setback, however, the proposed dwelling has observed a setback that is consistent with the DCP.

## 1.2 THE SUBJECT LAND

The land the subject of this variation request is known as Lot 1 DP 1125216, No 107 Frenchs Forest Road, SEAFORTH (refer to Figure 2 below).

107 Frenchs Forest Road, SEAFORTH

FIGURE 2 – SITE CONTEXT



### 1.3 PROPOSED DEVELOPMENT

The demolition of the existing dwelling on the Site and the erection of a new two-storey dwelling on the Site ("Proposed Development"). Further details of the development are provided in Section 3.1 of the Statement of Environmental Effects prepared by this firm and accompany this report.

### 1.4 ZONING

The site falls within the R2 Low Density Residential zone under Manly Local Environmental Plan 2013.

## 2 Provisions of Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the LEP 2013 operates as a precondition to the exercise of power to grant consent and unless a consent authority is satisfied that the precondition has been met, consent cannot be granted to a proposed development that contravenes development standards. Two positive opinions of satisfaction under clause 4.6(4)(a)(i) and (ii) must be made as stated in Section 2.1 below.

### 2.1 CLAUSE 4.6(4)(A)(I) – ADEQUATE ADDRESS OF MATTERS UNDER CLAUSE 4.6(3)

In response to cl. 4.6(3) two matters must be addressed:

- A. that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; and
- B. that there are sufficient environmental planning grounds to justify contravening the



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107 Frenchs Forest Road, SEAFORTH

development standard.

**(A) Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.**

It is noted that the objectives of the floor space ratio under Clause 4.4(1) 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.

These objectives are addressed in the request for variation, as required by recent decisions of the Land & Environment Court in Section 4.

These objectives are achieved notwithstanding the breach of the standard, making it unnecessary to apply the floor space ratio. The above objectives are addressed:

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

**Comment:** The amended proposed development is a conventional pitch roof design that is proposed to be constructed of various materials. The front and rear facades of the dwelling are suitably articulated and the longer eastern side wall is indented to minimise bulk and scale impacts. The side boundary setbacks have now been increased to be slightly less than the combined [requirement of 3.8m under the DCP control at 3.6m. The DCP requires a 1.9m setback from each side boundary for the first floor, whilst the proposal is for 1.8m setbacks and therefore marginal in terms of overall compliance.](#) As stated in the amended SoEE, the increase in the side boundary setbacks has resulted in a decrease in floor area of the dwelling.

The increase in setbacks has resulted in the bulk and scale of the dwelling being reduced with setbacks that are slightly less than that permitted by the DCP control. In this regard, the combined setback required by the DCP is 3.8m; whilst the proposal is for 3.6m. In our opinion, the setbacks are not inconsistent with the setbacks within the area and do not detract from the streetscape. It would be noted that the setbacks are based on a formula of height and therefore setbacks would vary depending on the height of dwellings.

The streetscape character is also variable, with front fences or landscaping dominating the streetscape. The design of front fences varies in height from low fencing to high fencing and materials. The landscape character is also variable to the extent that it could be stated that there is no discernible rhythm or theme of character. The colour scheme of dwellings and materials do not provide cues to the character of the street. The road is long and rises and the streetscape can

## 107 Frenchs Forest Road, SEAFORTH

only be appreciated by pedestrians.

On the basis of the design and materials used, the development will be in keeping with the bulk and scale of the surrounding area. The proposed dwelling will make a positive contribution to the streetscape of Frenchs Forest Road and is in keeping with the low density residential character of the area.

**(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 proposal marginally exceeds the dwelling density of the site, as addressed in this amended variation request and the SoEE prepared by this firm. However, given the relatively small allotment size of 362.59m<sup>2</sup> and width of the property, there is justification to support the variation on the basis of the suitably articulated facades and use of lightweight materials. The proposal will not obscure any important landscape or townscape features. The increase in setbacks also provides a view corridor along the side boundaries.

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

**Comment:** The proposed 2 storey dwelling exhibits architectural merit and is in keeping with the existing and envisaged low density character of the area. As stated above, the character of the area will evolve over the years as older dwelling stock is replaced by new modern dwellings and the existing streetscape character is one that is highly variable, with no consistency that would provide a built form character. A variation in architectural treatment is evident in the street.

As demonstrated in the Statement of Environmental Effects prepared by this firm, the development is generally compliant with the LEP and DCP. The property has been recognised as an undersized lot and the Council has provided flexibility in the DCP control to allow, subject to a written request under Clause 4.6, variations to this particular standard.

Obviously, the Council could not look at each lot that was undersized when preparing the minimum lot size map and moreover the floor space ratio map to provide different controls and hence 'blanket' floor space ratio controls to whole areas. However, the provision in the DCP looks at setting aside the 'blanket' control and provide a sliding scale for a range of lot sizes. This is a fair planning outcome for such lots and in our opinion is a planning outcome that provides flexibility for Council to assess applications that may not be in strict compliance with planning controls.

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

**Comment:** The proposal will not have any adverse environmental impacts upon the use or enjoyment of adjoining properties or the public domain, as discussed in the Statement of Environmental Effects. The amended plan provides a development that is essentially compliant with the planning controls and provides a greater setback and therefore improved amenity for adjoining residents.

**(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:** Non-applicable.

Having regard to all of the above, it is our opinion that compliance with the floor space ratio standard is unnecessary in the circumstances of the case as the development meets the objectives of that standard and the zone objectives, as described in this written variation request.

Compliance with the development standard is both unreasonable and unnecessary in this case given the fact that the property and the size of the lot already exist. The potential site development is in keeping with the existing character that has occurred in the immediate area having regard to the zoning of the land.

It is also relevant that, as a general principle, the highest and best economic use of land which has been identified as appropriate for residential development, will conversely act to preserve the character of the area, particularly having regard to the setting of the area and adjoining developments.

Having regard to the above we consider that the approach taken serves the objects of the Act of promoting the orderly and economic use of land, with a development that provides for housing close to services and facilities in the immediate area.

It is not considered that a variation to the development standard in these circumstances would act as a general planning change more appropriately dealt with under *Part 3 of the Environmental Planning & Assessment Act 1979*.

## 2.2 CLAUSE 4.6(1) - OBJECTIVES

The objectives of clause 4.6(1) are as follows:

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

Subclause 2 essentially provides for Council to grant development consent for a development that would contravene a development standard. Subclause 3 has the same requirement that a written request must be received objecting to the particular development standard.

The proposed variation to Clause 4.4 is considered to be consistent with the objectives of the exception clause. In this regard, given the specific circumstances of the site a better and more appropriate outcome for the proposed dwelling is achieved by allowing flexibility to the development standard, in this particular circumstance, also noting the comments above regarding Subclause 4.1.3.1 of the DCP.

## 2.3 REQUIREMENTS OF EXCEPTION UNDER CLAUSE 4.6

Clause 4.6(2) & (3) of MLEP 2013 states:

- (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.*

(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.

This report seeks to demonstrate that compliance with Clause 4.4 of MLEP 2013 is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard in this particular instance.

In our opinion, strict compliance with the development standard is *unreasonable or unnecessary* for the reasons espoused in this report, as required to be addressed by the above L&EC decisions.

The surrounding area is characterised by predominantly residential development of various eras and built forms. The character of the area has evolved into different forms of residential development, particularly as various town planning policies have changed over the years. The proposed development is therefore consistent with the character of the area, being located in a transitional area, where older style dwellings are being replaced with new contemporary dwellings, which has occurred at No 109 Frenchs Forest Road.

In instances, such as this proposal on an undersized lot, a 0.45:1 FSR significantly reduces the dwelling size and persons are redeveloping houses on the basis of either achieving the required FSR under the LEP, obviously on larger lots, or in this case building a reasonable sized family home on a smaller lot. The sizes of houses in the area are generally large and a house of this size would not be out of character with the streetscape. This also needs to be put into context with the cost of land and redeveloping.

Given the fact that the general character of the area, was carefully considered during the preparation of the proposal, the coordination of the orderly and economic use and development of the land will most appropriately be achieved by supporting variations to the relevant development standards, noting the non-compliance with the standard.

It is also relevant that, as a general principle, the highest and best economic use of land which has been identified as appropriate for residential development, will conversely act to preserve the character of the area. Having regard to the above we consider that the approach taken serves the objects of the Act of promoting the orderly and economic use of land.

### 3 Objectives of Development Standards

#### 3.1 CLAUSE 4.4 – FLOOR SPACE RATIO

Clause 4.4 is a development standard that may only be varied if the application is accompanied by a written request that adequately addresses the required matters.

The basis of this report is to demonstrate that the FSR requirement of 0.45:1 is unreasonable considering the specific circumstances of this case is not appropriate given the desired future

## 107 Frenchs Forest Road, SEAFORTH

character of the locality and the minimal adverse environmental impacts including amenity impacts on neighbouring residential properties resulting from the proposed development.

On this basis, the opportunity is available to highlight that visual significance through the proposed building's siting and the general high quality building design, and as stated above, to comply with clause 4.4(2).

It has been demonstrated that the proposed amended dwelling has been designed to take into consideration its surroundings and "fit in" with the streetscape. Therefore, restricting the FSR is unreasonable and unnecessary for the proposed development and Council has recognized that there does need to be a control that applies to undersized lots.

It is also considered that the subject development will present a high-quality urban form, having regard to existing development in the area. It is noted that the Council has approved the redevelopment of No 109 Frenchs Forest Road, which does not comply with the FSR control. The variation for this property was slightly different, as this property is larger (405m<sup>2</sup>) and has a wider frontage. Therefore, the variation was in this instance less than 10%.

#### 4 Justification for Non-Compliance with the Development Standards

##### 4.1 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(A))?

Compliance with the development standards under Clause 4.4 is both unreasonable and unnecessary in this case given that the characteristics of the site and the circumstances of the proposed building to allow for the proposed FSR.

In *Wehbe v Pittwater Council* (2007) NSW LEC 827, Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary.

The judgement goes on to state that:

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved.*

*However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).*

The potential site development is in keeping with the existing character and the form of development that has occurred in the immediate area having regard to the R2 zone applicable to the site and sites in the immediate area.

In addition, the proposed streetscape when viewed from various locations will provide variety and interest. What is achieved by permitting the proposed development is a streetscape that has various architectural elements, but generally consistent heights, setbacks and scale.

Having regard to all of the above, it is our opinion that compliance with the floor space ratio development standard is unnecessary in the circumstances of the case as the development meets



the objectives of that standard and the zone objectives, as described at Part 3 of this written variation request. On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

**4.2 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD (CLAUSE 4.6(3)(B))?**

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

Having regard to the objectives of the *Environmental Planning and Assessment Act 1979* sufficient environmental planning grounds exist in this case to justify breaching the floor space ratio control for a dwelling house. In particular the objects under section 1.3(a), (b), (c), (g) and (h) are pursued by this development. The objective seeking orderly and economic development of land is clearly supported by approval of this development.

Part of the environmental planning grounds in this matter arise from the fact that this is an existing lot that cannot be increased in size to meet the standard due to part of the lot being acquired for road widening purposes.

A larger lot (say 500m<sup>2</sup>), in our opinion, would have reasonably met the FSR control. But the subject lot is 137.4m<sup>2</sup> less than the minimum lot size.

Clause 4.6(3)(b) requires that the written request to vary a development standard demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard. In order to demonstrate that there are sufficient environmental planning grounds to justify varying the development standard and to satisfy objective (1)(b) of Clause 4.6 by demonstrating that the proposed variation allows for a better outcome for and from the development. The following discussion is provided:

- The discussion provided throughout this variation request demonstrates that the existing lot size will not result in any adverse environmental impacts, in terms of amenity impacts, nor will there be any adverse streetscape impacts given the nature of the departure. It is submitted that there are sufficient environmental planning grounds to support the variation.

The FSR requirements under LEP 2013 are, in the circumstances of this matter, unreasonable and unnecessary, as discussed in this submission, being an existing lot. The site is zoned for a dwelling house, with a lot size control of 500m<sup>2</sup>.

Exceedance of the FSR control is therefore not a prohibition, but more relating to development that may be developed in residential zones, with lot size controls restricting development on lots less than 500m<sup>2</sup>. The zoning of the land clearly envisages a dwelling house to be constructed on the property.

**(C) In addition, under cl 4.6(4)(a)(ii) of the LEP, the consent authority must also be satisfied that:**

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

107 Frenchs Forest Road, SEAFORTH

In terms of the public interest, it is considered that the reduction of the floor area of the dwelling as a result of the increase by side and rear setbacks is in the public interest and is consistent with the objectives of Clause 4.4 and the R2 Low Density Residential zone under MLEP 2013. It is considered that strict maintenance of the standard in this instance is not in the public interest, as the proposal will result in the public benefit by delivering a dwelling that is essentially compliant with all other requirements of the MLEP 2013 and MDCP 2013, as addressed in the SoEE prepared by this firm. In addition, the property is an undersized lot that has been recognised by Council planning controls to allow variations due to the lot size.

As stated above, whilst Clause 4.1.1.3 of MDCP 2013 is not a development for which Clause 4.6 of MLEP 2013 applies, nonetheless the clause in the MLEP recognises that there will be instances of non-compliance and that consideration under the clause is a matter for consideration in any variation request.

In the judgement within Initial Action, Preston CJ indicated that a consent authority only needs to be satisfied that an applicant has adequately addressed the matters within clause 4.6(3), and that, pursuant to 4.6(4)(a)(ii), the development is consistent with the objectives of the standard and consistent with the objectives of the zone. Although not strictly required, this variation has addressed the reasons that the development satisfies 4.6(4)(a)(ii).

It is also evident that the existing locality referred to within the objectives, is eclectic and is not characterised by any particular homogenous built form. It is also evident that developments in the area occupy various footprints, lot sizes and lot frontages.

Having regard to the objectives of the *Environmental Planning and Assessment Act 1979* sufficient environmental planning grounds exist in this case to justify breaching the FSR standard, in particular the fact that this is an existing property that has a portion of the front part of the property acquired for road widening purposes. In particular the objects under section 1.3(a), (b), (c), (g) and (h) are pursued by this development.

The objectives of the standard and the zone are addressed above under heading A.

In addition the public interest is well served by a dwelling constructed on the land to replace an older style dwelling that is probably nearing its 'used by date'.

It is considered that this represents an individual response which Clause 4.6 was intended to be available to set aside compliance with the generic controls as unreasonable or unnecessary in the circumstances of this particular case.

## 5 Conclusion

Having regard to the judgement in *Weibe*, the objectives of the *Environmental Planning and Assessment Act 1979*, the objectives of the zone and the objectives of the standard, sufficient environmental planning grounds exist in this case to justify breaching the floor space ratio control.

Having regard to the objectives of the *Environmental Planning and Assessment Act 1979* sufficient environmental planning grounds exist in this case to justify breaching the floor space ratio control. In particular the objects under section 1.3(a), (b), (c), (g) and (h) are pursued by this development. The objective seeking orderly and economic development of land is clearly

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107 Frenchs Forest Road, SEAFORTH

supported by approval of this development.

Given that the constraints of the land were carefully considered during the preparation of the proposal, the coordination of the orderly and economic use and development of the land will most appropriately be achieved by supporting variations to the relevant development standard.

It is considered that this case represents an individual circumstance in which Clause 4.6 was intended to be available to set aside compliance with unreasonable or unnecessary development standards.

It is considered that the variation to the development standard contained in Clause 4.4 of MLEP 2013 should be supported, because it is consistent with Clause 4.6, the objects of the EPA & A Act, the relevant aims and objectives of MLEP 2013 and the R2 Low Density Residential zone and would appear to create a negligible impact on the natural environment and the landscape character of the area.

The authority within the judgement in Initial Action has reaffirmed that the role for the consent authority is to determine whether the proposed development will be consistent with the objectives of the standard and the objectives of the zone. This involves a consideration of the "development" in its entirety, not just the proposed variation. It is clear that the development meets the objectives of the standard and of the zone.

Notably, the development is compatible with the height, bulk and scale of the existing character of the development within this established residential area, as discussed above.

This written request has demonstrated that compliance with the standard in this instance would be unnecessary and unreasonable and that there are environmental planning grounds to justify the contravention of the development standard. Given the above, it is considered that the requirements of Clause 4.6 have been satisfied and that the variation to the floor space ratio development standard can be approved.

**ITEM 3.2**

**REV2021/0016 - 61 DRESS CIRCLE ROAD, AVALON BEACH -  
REVIEW OF DETERMINATION OF APPLICATION DA2020/1194  
GRANTED FOR ALTERATIONS AND ADDITIONS TO A  
DWELLING HOUSE.**

**REPORTING MANAGER** Rodney Piggott  
**TRIM FILE REF** 2021/549331  
**ATTACHMENTS**  
1 Assessment Report  
2 Working Plans

**PURPOSE**

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

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approves** REV2021/0016 for Review of Determination of Application DA2020/1194 granted for alterations and additions to a dwelling house on land at Lot 55 DP 11462, 61 Dress Circle Road, Avalon Beach, subject to the conditions outlined in the Assessment Report.

## REVIEW OF DETERMINATION ASSESSMENT REPORT

|   |  |
|---|--|
| <b>Application Number:</b>                | REV2021/0016   |
| <b>Responsible Officer:</b>               | Nick Keeler  |
| <b>Land to be developed (Address):</b>    | Lot 55 DP 11462, 61 Dress Circle Road AVALON BEACH NSW 2107  |
| <b>Proposed Development:</b>              | Review of Determination of Application DA2020/1194 granted for alterations and additions to a dwelling house |
| <b>Zoning:</b>                            | E4 Environmental Living  |
| <b>Development Permissible:</b>           | Yes  |
| <b>Existing Use Rights:</b>               | No   |
| <b>Consent Authority:</b>                 | Northern Beaches Council   |
| <b>Delegation Level:</b>                  | DDP  |
| <b>Land and Environment Court Action:</b> | No   |
| <b>Owner:</b>                             | Haidee Anna Keegan   |
| <b>Applicant:</b>                         | Jamie King Landscape Architect   |
| <b>Application Lodged:</b>                | 26/05/2021   |
| <b>Integrated Development:</b>            | No   |
| <b>Designated Development:</b>            | No   |
| <b>State Reporting Category:</b>          | Refer to Development Application   |
| <b>Notified:</b>                          | 05/07/2021 to 19/07/2021   |
| <b>Advertised:</b>                        | Not Advertised   |
| <b>Submissions Received:</b>              | 0  |
| <b>Clause 4.6 Variation:</b>              | Nil  |
| <b>Recommendation:</b>                    | Approval   |
| <b>Estimated Cost of Works:</b>           | \$ 19,000.00   |

### EXECUTIVE SUMMARY

The application seeks a review of the determination of DA2020/1194 granted for alterations and additions to a dwelling house, which was approved on 27/01/2021.

The consent included a condition requiring the deletion of the proposed hardstand parking area adjacent to Dress Circle Road to be replaced with deep soil landscaping. The review seeks to relocate the hardstand parking area to a single space within the footprint of the existing driveway. The proposal requires the excavation of the driveway to facilitate a compliant hardstand parking area and minor siting adjustments of landscaped elements and stairs around the parking space. All other elements approved under DA2020/1194 remain unaltered.



No submissions were received during the notification period.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site.

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

### **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks to review the determination of DA2020/1194 granted for alterations and additions to a dwelling house. The original development application sought development consent for:

- Partial demolition of existing driveway and paving
- Facilitation of a hardstand space located off Dress Circle Road
- Construction of a new driveway and crossover
- Construction of a new double garage and storeroom
- Construction of a first floor studio and balcony
- Associated excavation, retaining walls and landscaping works

While most of the above was approved, a consent condition (9a & b) was included requiring the hardstand parking area adjacent to Dress Circle Road be deleted and replaced with deep soil landscaping.

The applicant proposes to replace the proposed hardstand area with deep soil landscaping, in accordance with the consent condition, as well as altering the existing driveway to facilitate a single hardstand parking space. The proposed works and excavation are contained within the existing driveway footprint. Minor amendments to the siting of landscaped elements and stairs is required to facilitate the proposed parking space.

### **ASSESSMENT INTRODUCTION**

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

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

## SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3  
Pittwater 21 Development Control Plan - D1.1 Character as viewed from a public place  
Pittwater 21 Development Control Plan - D1.4 Scenic protection - General  
Pittwater 21 Development Control Plan - D1.8 Front building line

## SITE DESCRIPTION

|                                   |   |
|-----------------------------------|---|
| <b>Property Description:</b>      | Lot 55 DP 11462 , 61 Dress Circle Road AVALON BEACH NSW 2107  |
| <b>Detailed Site Description:</b> | <p>The subject site consists of one (1) allotment located on the northern side of Dress Circle Road and western side of Bellevue Avenue.</p> <p>The site is generally irregular in shape with a frontage of 51.2m along Dress Circle Road and secondary street frontage of 20.115m to Bellevue Avenue and a depth of 69.5m. The site has a surveyed area of 2,024m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and contains a dwelling that is two (2) storeys located towards the rear and a swimming pool located towards the front of the site. Pedestrian and vehicle access is gained via the Dress Circle Road frontage.</p> <p>The slope of the site is 23%, falling approximately 16m from the rear boundary to the road frontage.</p> <p>The site contains a modified landscape setting, with terraced areas as well as a number of established native gum trees within the front yard.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by low density residential dwellings within a bushland/landscaped setting.</p> |

Map:



## SITE HISTORY

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

Application **N1139/99** for additions to the dwelling was approved on 10/12/1999.

Application **N0133/12** for alterations and additions to the existing dwelling and construction of a swimming pool was approved on 02/07/2012 by Council staff.

Application **DA2019/0717** for Alterations and additions to a dwelling house was approved on 21/08/2019 by Council staff.

Application **DA2020/1194** for Alterations and additions to a dwelling house was approved on 27/01/2021 by Council staff.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months (12 months during the prescribed period between 25/03/2020 and 25/03/2022) after the date of determination of the development application. The application was determined on 27/01/2021 and the notice of determination was issued on 27/01/2021. The review was lodged on 26/05/2021 and is to be considered by the Northern Beaches Development Determination Panel on

14/07/2021, which is within 12 months of the date of determination.

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

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

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited from 05/07/2021 to 19/07/2021 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**

| <b>Internal Referral Body</b>  | <b>Comments</b>  |
|--------------------------------|--|
| NECC (Development Engineering) | <p>The amended parking space proposed off the existing driveway to Dress Circle Road is satisfactory.</p> <p>It is noted that the secondary driveway gradient has been conditioned to be a maximum of 1 in 4 grade which will require the internal retaining walls to be higher to suit the additional cut. A check of the proposed garage level indicates that this level can be achieved with the required maximum grade of 1 in 4 with a transition of 1 in 10 for 1.5 metres prior to the garage. It is considered that the plans should be amended to suit the conditions for consistency.</p> <p>As the existing crossing is to remain, condition 39 of consent DA2020/1194 can be deleted.</p> <p>No objection to the proposed amended parking area subject to the amendment to the plans and deletion of condition 39.</p> |

### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***



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

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

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

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

Nil

#### Pittwater Local Environmental Plan 2014

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

#### Compliance Assessment

| Clause                      | Compliance with Requirements |
|-----------------------------|------------------------------|
| 4.3 Height of buildings     | Yes                          |
| 7.1 Acid sulfate soils      | Yes                          |
| 7.2 Earthworks              | Yes                          |
| 7.6 Biodiversity protection | Yes                          |
| 7.7 Geotechnical hazards    | Yes                          |

#### Pittwater 21 Development Control Plan

#### Compliance Assessment

| Clause  | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted                             | Yes                          | Yes                         |
| A4.1 Avalon Beach Locality  | Yes                          | Yes                         |
| B1.3 Heritage Conservation - General                                      | Yes                          | Yes                         |
| B1.4 Aboriginal Heritage Significance                                     | Yes                          | Yes                         |
| B3.1 Landslip Hazard  | Yes                          | Yes                         |
| B3.6 Contaminated Land and Potentially Contaminated Land                  | Yes                          | Yes                         |
| B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor | Yes                          | Yes                         |



| Clause  | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| B5.15 Stormwater  | Yes                          | Yes                         |
| B6.1 Access driveways and Works on the Public Road Reserve          | Yes                          | Yes                         |
| B6.2 Internal Driveways   | Yes                          | Yes                         |
| B6.3 Off-Street Vehicle Parking Requirements                        | Yes                          | Yes                         |
| B8.1 Construction and Demolition - Excavation and Landfill          | Yes                          | Yes                         |
| B8.3 Construction and Demolition - Waste Minimisation               | Yes                          | Yes                         |
| 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                         |
| C1.13 Pollution Control   | Yes                          | Yes                         |
| D1.1 Character as viewed from a public place                        | Yes                          | Yes                         |
| D1.4 Scenic protection - General                                    | Yes                          | Yes                         |
| D1.5 Building colours and materials                                 | Yes                          | Yes                         |
| D1.8 Front building line  | No                           | Yes                         |
| D1.9 Side and rear building line                                    | Yes                          | Yes                         |
| D1.11 Building envelope   | Yes                          | Yes                         |
| D1.14 Landscaped Area - Environmentally Sensitive Land              | Yes                          | Yes                         |
| D1.17 Construction, Retaining walls, terracing and undercroft areas | Yes                          | Yes                         |

#### Detailed Assessment

##### **D1.1 Character as viewed from a public place**

The original assessment outlined concerns that the proposed hardstand parking area adjacent to Dress Circle Road may have an undesirable impact upon the desired future character of the locality and streetscape by way of significantly reducing the landscaped area forward of the front building line of the dwelling.

The amended proposal is considered to adequately address the concerns raised in the original assessment by deleting the original hardstand parking area and provide a new single hardstand parking within the footprint of the existing driveway. The relocated parking area is setback a minimum of 4.9m from the Dress Circle Road frontage and is not expected to cause any unreasonable visual or amenity impact to adjacent properties or the public domain and landscaping is able to be provided in the area where the original parking area was proposed.

As such, it is concluded that the revised development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

##### **D1.4 Scenic protection - General**

As discussed under Part D1.1, the revised proposal is considered to appropriately mitigate the impact of the proposed parking area on the scenic qualities of the streetscape and locality.

#### **D1.8 Front building line**

The original assessment outlined concerns that the proposed hardstand parking area adjacent to the Dress Circle Road frontage did not satisfy the front building line requirements or objectives due to the substantial reduction in soft landscaping in the front setback area and the unacceptable visual and amenity impacts that would occur as a result.

While the relocated parking area does not strictly comply with the 6.5m setback requirement of the control (minimum 4.9m setback proposed), the proposal is considered to appropriately address the concerns raised in the original assessment by way of limiting additional impervious surface on the site by containing the parking area within the footprint of the existing driveway and providing additional soft landscaping in the front setback area. This greatly reduces the visual and amenity impacts of the proposed parking area on surrounding properties and the public domain.

As such, it is concluded that the revised development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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 REV2021/0016 for Review of Determination of Application DA2020/1194 granted for alterations and additions to a dwelling house on land at Lot 55 DP 11462, 61 Dress Circle Road, AVALON BEACH, subject to the conditions printed below:

### **A. Add Condition No. 1A - Review 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) Review of Determination Approved Plans**

| <b>Architectural Plans - Endorsed with Council's stamp</b> |              |                                |
|--|--------------|--------------------------------|
| <b>Drawing No.</b>   | <b>Dated</b> | <b>Prepared By</b>             |
| 2065 Sht-101 Issue E                                       | 05/05/2021   | Jamie King Landscape Architect |
| 2065 Sht-102 Issue E                                       | 05/05/2021   | Jamie King Landscape Architect |
| 2065 Sht-103 Issue E                                       | 05/05/2021   | Jamie King Landscape Architect |

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

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

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

### **B. Modify Condition No. 9 - Amendments to the approved plans to read as follows:**

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

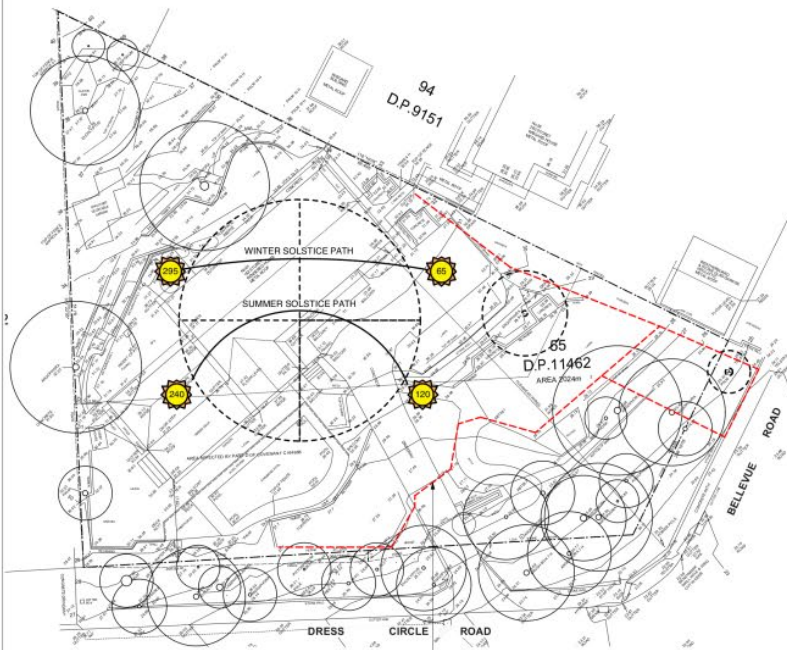
#### **a) The retaining wall located within Bellevue Avenue Road Reserve is to be constructed of earthy and**

natural coloured finishes and materials.

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

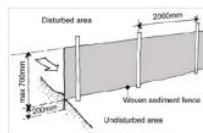
Reason: To ensure development minimises unreasonable impacts upon surrounding land.

Site Plan  
1:200@A1 1:400@A3. Do not scale off plan



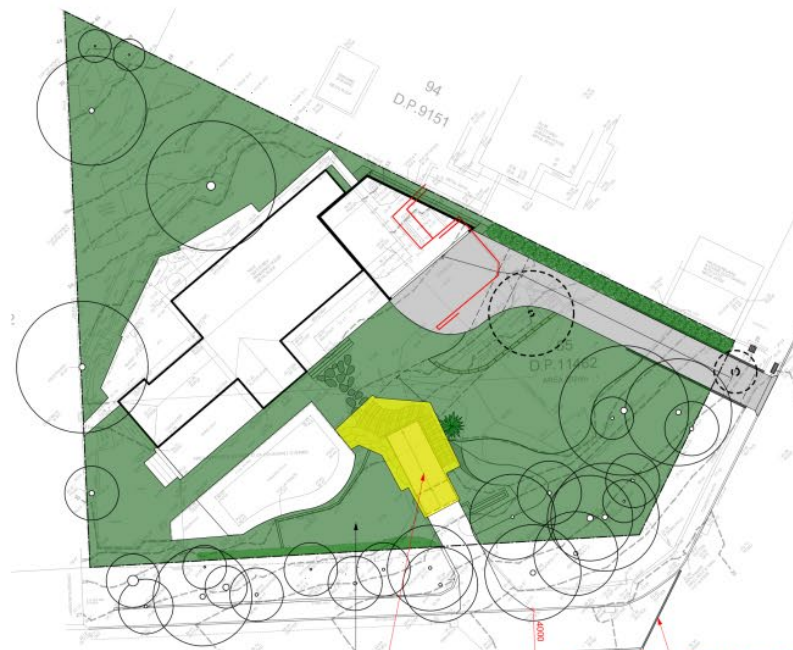
Red dashed line indicates sedimentation control fence to be implemented throughout construction to appropriate standard

| AREA CALCULATION           |                        |            |
|----------------------------|------------------------|------------|
|                            | AREA (m <sup>2</sup> ) | PERCENTAGE |
| Site                       | 2024.00                |            |
| Landscape total as per DCP | 1236.26                | 61.08%     |
| Area of outdoor recreation | 94.00                  | 4.64%      |
| TOTAL AREA                 | 1330.26                | 65.72%     |
| DCP compliance             | YES                    | YES        |



Sedimentation Control Fence  
Not to scale.  
Source: www.yourhome.gov.au

8.2 Plan and Areas Calculation  
1:200@A1 1:400@A3. Do not scale off plan



Green shaded area indicates compliant landscape area  
Yellow hatch defines area of 8.2 Modifications

Double black line defines double white lines on dress circle road

Solid black line defines stop line on dress circle road  
Traffic island

#### Legend

- MULCH AREA
- SOFT-FALL
- SAND
- ARTIFICIAL TURF
- TURF AREA
- TIMBER DECKING
- CONCRETE PAVING
- UNIT PAVING
- STAIRS
- PEBBLE
- GRAVEL
- COBBLESTONE
- TIMBER
- WATER
- MASONRY RETAINING WALL
- STONE RETAINING WALL
- TIMBER RETAINING WALL
- BOULDER RETAINING WALL
- SITE OR WORKS BOUNDARY
- PROPOSED LEVEL
- TOP OF WALL LEVEL
- Paving 1 MATERIAL NAME
- Surface FALL DIRECTION
- SURFACE DRAINS
- SURVEY (80% GREY LINES)
- EXISTING TREE TO RETAIN
- EXISTING TREE TO REMOVE
- EXISTING ROCK OUTCROP

Notes in Red define  
8.2 Modifications

Notes:  
- Do not scale off plan  
- Contractors to check all measurements  
- Verify before starting or commencing work  
- If any variations arise, contact the  
Landscape Architect  
- This design is not intended to be used in any  
manner without written consent  
of Jamie King Landscape Architect

| REVISION | DATE     | DESCRIPTION            | PROJECT # |
|----------|----------|------------------------|-----------|
| E        | 5/5/21   | Issue E for 8.2        | 2065      |
| D        | 22/05/20 | Issue D                |           |
| C        | 13/05/20 | Issue C                |           |
| B        | 05/05/20 | Issue B                |           |
| A        | 28/03/20 | DRAFT Issue for review |           |



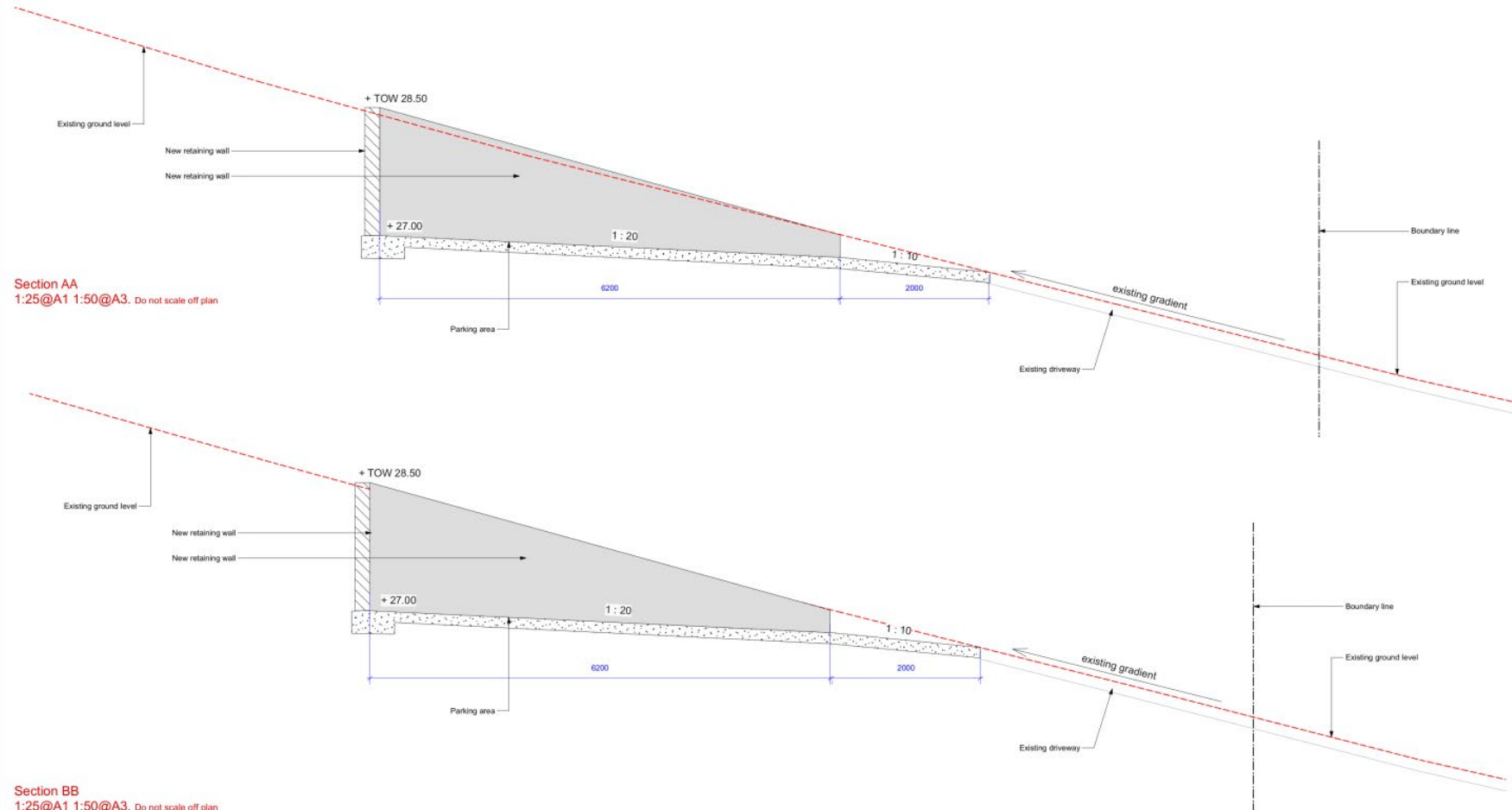
JAMIE KING  
LANDSCAPE ARCHITECT  
DESIGN • APPROVE • MANAGE

|                                   |                                    |                           |           |
|-----------------------------------|------------------------------------|---------------------------|-----------|
| PROJECT                           | 61 Dress Circle Road, Avalon Beach | PROJECT #                 | 2065      |
| CLIENT                            | Haidee Kegan                       | CHECKED                   | See above |
| DATE                              | Site Plan and Calculation          | SCALE                     | See above |
| DESIGNER                          | Jamie King Landscape Architect     | DATE                      | 2021      |
| 64 Pangrove Rd, Avalon, NSW, 2107 | T: 0421 517 191                    | E: jamie@jamieking.com.au |           |



Detail plan  
1:100@A1 1:200@A3. Do not scale off plan





**Notes in Red define  
8.2 Modifications**

|  |          |                                    |                  |
|--|----------|------------------------------------|------------------|
| <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Do not scale off plan</li> <li>Contractors to check all measurements, levels before starting or commencing work.</li> <li>If discrepancies arise, contact the Landscape Architect.</li> <li>This design is preliminary and is not to be reproduced in any way without written consent of Jamie King Landscape Architect</li> </ul> |          |                                    |                  |
| REVISION   | DATE     | DESCRIPTION                        |                  |
| E  | 5/5/21   | Issue E for 8.2                    |                  |
| D  | 22/05/20 | Issue D                            |                  |
| C  | 13/05/20 | Issue C                            |                  |
| B  | 05/05/20 | Issue B                            |                  |
| A  | 28/03/20 | DRAFT issue for review             |                  |
| PROJECT  |          | 61 Dress Circle Road, Avalon Beach | PROJECT # 2065   |
| CLIENT   |          | Haidee Kegan                       | DATE 4 See above |
| DRAWN  |          | SA                                 | SCALE 1:250      |
| CHECKED  |          | SA                                 | DATE 4 See above |
| DESIGN   |          | SA                                 | DATE 4 See above |
| PROJECT  |          | 61 Dress Circle Road, Avalon Beach | PROJECT # 2065   |
| CLIENT   |          | Haidee Kegan                       | DATE 4 See above |
| DRAWN  |          | SA                                 | SCALE 1:250      |
| CHECKED  |          | SA                                 | DATE 4 See above |
| DESIGN   |          | SA                                 | DATE 4 See above |



**JAMIE KING**  
LANDSCAPE ARCHITECT  
DESIGN • APPROVE • MANAGE

Jamie King Landscape Architect  
64 Paringrove Rd, Avalon, NSW, 2107 T: 0421 517 591 E: jamie@jamieking.com.au

**ITEM 3.3****DA2021/0419 - 266 WHALE BEACH ROAD, WHALE BEACH -  
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING  
HOUSE.**

**REPORTING MANAGER** Rodney Piggott  
**TRIM FILE REF** 2021/549353  
**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 DA2021/0419 for demolition works and construction of a dwelling house on land at Lot 221 DP 15376, 266 Whale Beach Road, Whale Beach, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                            |             |
|----------------------------|-------------|
| <b>Application Number:</b> | DA2021/0419 |
|----------------------------|-------------|

|   |   |
|---|---|
| <b>Responsible Officer:</b>               | Kye Miles   |
| <b>Land to be developed (Address):</b>    | Lot 221 DP 15376, 266 Whale Beach Road WHALE BEACH NSW 2107 |
| <b>Proposed Development:</b>              | Demolition works and construction of a dwelling house       |
| <b>Zoning:</b>                            | E4 Environmental Living                                     |
| <b>Development Permissible:</b>           | Yes   |
| <b>Existing Use Rights:</b>               | Yes   |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                    |
| <b>Delegation Level:</b>                  | DDP   |
| <b>Land and Environment Court Action:</b> | No  |
| <b>Owner:</b>                             | Cecilia Anne Hooper   |
| <b>Applicant:</b>                         | Allen De Carteret   |

|                                  |  |
|----------------------------------|--|
| <b>Application Lodged:</b>       | 30/04/2021                                 |
| <b>Integrated Development:</b>   | No   |
| <b>Designated Development:</b>   | No   |
| <b>State Reporting Category:</b> | Residential - Single new detached dwelling |
| <b>Notified:</b>                 | 10/05/2021 to 24/05/2021                   |
| <b>Advertised:</b>               | Not Advertised                             |
| <b>Submissions Received:</b>     | 8  |
| <b>Clause 4.6 Variation:</b>     | Nil  |
| <b>Recommendation:</b>           | Approval                                   |

|                                 |                 |
|---------------------------------|-----------------|
| <b>Estimated Cost of Works:</b> | \$ 2,857,030.00 |
|---------------------------------|-----------------|

### EXECUTIVE SUMMARY

The application seeks consent for the demolition of the existing dwelling house and construction of a three storey dwelling house with basement carparking.

The proposed dwelling has a relatively notable side boundary envelope variation of 42.9%. However, variation to Clause D12.8 Building envelope of the P 21 DCP is permitted in this instance as the building footprint is situated on a slope of 31%.

Notification of the application resulted in four (4) individual objections to the proposed development. In addition, one (1) submission was received in support of this application. The received submissions raised concern with the following matters;

- Building envelope,
- Amenity impacts,
- Excavation,
- Visual impact,
- Construction management,
- Streetscape,
- Flood study report,
- Overdevelopment.

The application has been referred to the Development Determination Panel (DDP) as the development has an estimated cost of construction over \$1 million and has four (4) unresolved objections

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

#### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for demolition works and construction of a dwelling house. The works will include;

##### **Demolition/excavation works:**

- Demolition of two-storey fibro cottage,
- Demolition of sandstone garage,
- Excavation works with a maximum depth of 6.0m to achieve the ground floor level at RL38.0m.

##### **Ground floor (RL 38.00):**

- Double garage,
- Entry, which includes an internal stair and lift,
- Bin storage, plant and store.

##### **First floor (RL 41.50):**

- Three bedrooms, including ensuites and south facing balconies,
- Laundry,
- Internal stair and lift access,
- Light well.

##### **Second floor (RL 45.00):**

- Living room, which includes a kitchen, dining, and sitting areas,
- South facing balcony,
- Rear courtyard,
- Internal stair and lift access.

##### **Mezzanine/Clearstory (RL 48.00):**



- Mezzanine,
- Internal access stair.

**External works:**

- Alterations to existing driveway to comply with Council's standard profiles,
- Associated landscaping works.

**Amended Plans**

Following a preliminary review of the proposal concern was raised from Council due to the proposed built form and extent of excavation. Following consultation with Council, amended plans were submitted on 08 July 2021, which addressed these concerns. The proposal was not formally re-notified in accordance with the CPP, as the revised design resulted in a lesser environmental impact than the original. Notwithstanding, the amended plans were sent out to western neighbour to which the changes relate to. The amended plans have been used to complete the assessment of this proposal.

**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 - A4.12 Palm Beach Locality  
 Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill  
 Pittwater 21 Development Control Plan - C1.3 View Sharing  
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
 Pittwater 21 Development Control Plan - D12.5 Front building line  
 Pittwater 21 Development Control Plan - D12.8 Building envelope

**SITE DESCRIPTION**

|                              |   |
|------------------------------|---|
| <b>Property Description:</b> | Lot 221 DP 15376 , 266 Whale Beach Road WHALE |
|------------------------------|---|

|                                   |   |
|-----------------------------------|---|
|                                   | BEACH NSW 2107  |
| <b>Detailed Site Description:</b> | <p>The subject site consists of one (1) allotment located on the northern side of Whale Beach Road.</p> <p>The site is irregular in shape with a splayed frontage of 15.3m along Whale Beach Road and a depth of 54.7m. The site has a surveyed area of 823.8m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates two storey weatherboard house with a single carport.</p> <p>The site is contained PLEP's geotechnical hazard mapping and has an overall slope of some 24 degrees to the south with an approximate fall of 12 meters.</p> <p>The site is heavily vegetated within the rear, however, there is no evidence of any endangered species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by two to three storey detached dwelling houses. Views of Whale Beach are obtained in the southern direction.</p> |

Map:



#### SITE HISTORY

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

**N0044/10**

Development application for the demolition of the existing dwelling and erection of a new two storey dwelling with basement parking. This application was approved by Council on 26 March 2010.

**PLM2020/0081**

Pre-lodgement meeting for the subject application held on 05 May 2020. In summary, it was advised that further resolution of the design should be undertaken to achieve a higher level of compliance with Council's controls and minimise the extent of excavation.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

| Section 4.15 Matters for Consideration'   | Comments  |
|---|---|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument   | See discussion on "Environmental Planning Instruments" in this report.  |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument                                      | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.  |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan  | Pittwater 21 Development Control Plan applies to this proposal.   |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement  | None applicable.  |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&amp;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&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans</p> <p><u>Clause 92</u> of the EP&amp;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>Clause 98</u> of the EP&amp;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&amp;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.   |
| 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) <b>Environmental Impact</b><br/>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) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>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

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/05/2021 to 24/05/2021 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 8 submission/s from:

| Name:   | Address:                                  |
|---|---|
| Mr Robert David Wines<br>Ms Barbara Irving Wines            | 281 Whale Beach Road WHALE BEACH NSW 2107 |
| Mr Bill Tulloch   | 9 Barrabooka Street CLONTARF NSW 2093     |
| Mr Geoffrey Arthur Thomas Godden<br>Mrs Ann Margaret Godden | 264 Whale Beach Road WHALE BEACH NSW 2107 |
| Mr Trevor Neil Holman                                       | 43 Norma Road PALM BEACH NSW 2108         |
| Mrs Jean Judith Walker                                      | PO Box 524 AVALON BEACH NSW 2107          |
|   |   |



| Name:                  | Address:                                  |
|------------------------|---|
| Mr Bernard Alexander   | 268 Whale Beach Road WHALE BEACH NSW 2107 |
| Geoffery Arthur Madden | 264 Whale Beach Road WHALE BEACH NSW 2107 |
| Mr Brendan Randles     | 11 Santa Marina Avenue WAVERLEY NSW 2024  |

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

- **Building envelope,**
- **Amenity impacts,**
- **Excavation,**
- **Reduced western side setback,**
- **Visual impact,**
- **Construction management,**
- **Streetscape,**
- **Flood study report,**
- **Overdevelopment,**
- **View loss.**

The matters raised within the submissions are addressed as follows:

- **Building envelope:** Concern is raised with the proposal's envelope non-compliance on the western side boundary.

Comment:

This matter has been discussed in further detail under Part 12.8 of this report. In summary, the proposed encroachment within the western side boundary envelope is reasonable given the slope constraints affecting the site. Furthermore, the proposed western elevation has been sufficiently articulated to reduce building bulk and it will not result in any adverse amenity impacts to adjoining land.

This matter does not warrant the refusal of the application.

- **Amenity impacts:** The received submissions have raised concern that the proposal will result in unreasonable amenity impacts to adjoining land. In particular the submissions highlighted concerns relating to privacy and overshadowing.

Comment:

The proposal has been assessed against the privacy provisions of P21DCP (see Part C1.5 of this report), which stipulates that private open space areas (including swimming pools and living rooms) of adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation. In summary, the proposal displays clear attempts within its design to preserve and enhance the privacy experienced between buildings, through appropriate screening, landscape buffers and adequate spatial separation. Overall, the proposal will not result in any unreasonable privacy impacts.

The application is accompanied by shadow diagrams which demonstrates that the extent of additional overshadowing commensurate to the current situation is minor. The subject site is on a north / south orientation and it does not overshadow neighbouring properties for more than 3 hours between 9am and 3pm, though they are both partially self shaded at different times during the day. Overall, compliance with Part C1.4 Solar Access of the P21DCP has been



demonstrated.

This matter does not warrant the refusal of the application.

- **Excavation:** Concern is raised with the proposed excavation, particularly being within 1.0m of the western side boundary and the associated impacts this will have on the adjoining dwelling known as No.264 Whale Beach Road.

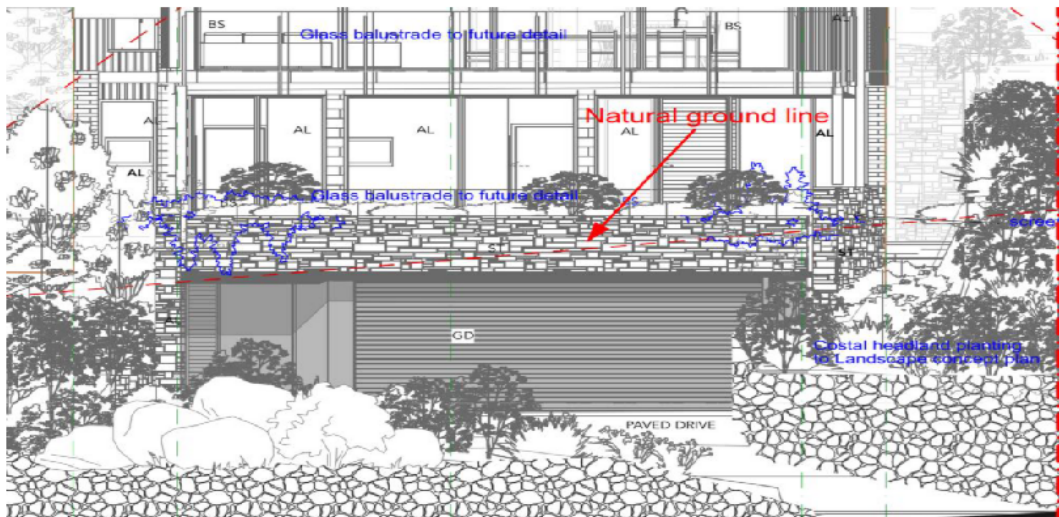
Comment:

The supporting geotechnical assessment details the site's subsurface condition and demonstrates that the proposed excavation is acceptable, subject to adherence to recommendations made in the report. In addition, the report was reviewed by Council's Development Engineer, who raised no objections to the proposal in relation to earthworks, subject to conditions. Furthermore, imposed conditions will require the applicant to monitor the concerned site throughout construction via dilapidation reports.

- **Reduced western side setback:** Concern is raised that the proposed dwelling has a reduced 1.0m western setback, as the existing dwelling at No. 264 Whale Beach Road adjoins the common boundary at parts on a nil setback.

Comment:

The proposal includes the 1.0m minimum western setback, to provide a site specific solution in minimising the need of excessive excavation. As displayed in the diagram below if the built form was to be shifted towards the eastern boundary it would result additional excavation, as the land slopes up in the eastern direction, which is contrary to the objectives of the zone that requires residential development to be integrated within the landform and landscape. In addition, reduced western side setback will not give rise to any adverse amenity impacts as explained above.



This matter does not warrant the refusal of the application.

- **Visual impact:** Concern is raised that the proposed dwelling will result in an unreasonable visual impact to No.264 Whale Beach Road. In particular the submission indicates that the building envelope non-compliance exacerbates this issue along with the reduced western setback, undercroft, and flue.

Comment:

As above, the proposed encroachment within the western side boundary envelope is considered reasonable, as the built form as a whole is highly articulated and responds appropriately to the slope of the land. In addition, the proposed dwelling provides a compliant western side setback, which gradually increases as the dwelling progresses upslope (north) to avoid any unreasonable overlooking into No.264 Whale Beach Road's private open space and internal living areas.

The proposal involves a comprehensive landscape design that effectively integrates the dwelling within the landform and landscape, when viewed from adjoining public and private spaces. Furthermore, the revised design limits the excavation within the western setback area, which will assist with the establishment of deep soil landscaping that is of the size and scale to visually reduce the built form (including the proposed undercroft and flue). In this regard it is considered that the proposal complies with the requirements of Part D12.1 *Character as viewed from a public place* and D12.14 *Scenic Protection Category One Areas* of P21DCP, as the dwelling is secondary to landscaping and vegetation.

This matter does not warrant the refusal of the application.

- **Construction management:** Concern is raised with the associated construction impacts of this proposal. In addition, the submission has requested that a Construction & Demolition Traffic Management Plan is provided prior to the issue of any consent.

Comment:

The supporting geotechnical assessment details measures and strategies that will be implemented over the course of the development, which have formed part of the recommended conditions of consent. In addition, the report was reviewed by Council's Development Engineer, who recommended that a Traffic Management Plan is provided prior to the issue of the construction certificate. Overall, it is considered that the construction related impacts will be reasonably mitigated by the above-mentioned conditions.

- **Streetscape:** Concern is raised that the proposal will result in unreasonable impacts upon the streetscape.

Comment:

Overall, the entire proposal will result in a better streetscape outcome due to the removal of the original dwelling, carport, and driveway. The landscaping facing the streetscape will be enhanced. In addition, as discussed in this report under Part A4.12 the proposal achieves reasonable compliance with the desired future character of the Palm Beach locality, which indicates compatibility within the streetscape.

This matter does not warrant the refusal of the application.

- **Flood Study Report:** Submissions raised concern that the proposed development will result in unreasonable stormwater runoff and no hydraulic report has been provided to assess these impacts.

Comment:

Council's Development Engineer is generally supportive (subject to conditions) of the proposal in relation to stormwater management and onsite detention.

- **Overdevelopment:** Concern is raised that the proposal represents an overdevelopment of the site.

Comment:

As above the proposal achieves general compliance with the desired future character of the Palm Beach locality. In addition, the proposal provides a compliant landscape setting with 61.2% (505sqm) of the site dedicated towards landscaped area, which exceeds P21DCP's minimum requirements. Overall, it is considered that the proposal is symptomatic of residential developments commonly found within the locality.

This matter does not warrant the refusal of the application.

- **View loss:** Concern was raised from No. 43 Norma Street that the proposal would result in view loss.

Comment:

This submission was resolved following further clarification of the submitted plans and the level difference between the subject site and No. 43 Norma Street.

## REFERRALS

| Internal Referral Body                       | Comments  |
|--|---|
| Environmental Health (Solid Fuel/Oil Heater) | <p><b>APPROVAL - subject to conditions</b></p> <p><b>General Comments</b></p> <p>DA2021/0419 is for a gas heater at 266 Whale Beach Road Whale Beach NSW 2107 and is approved with conditions. The location of the flue is appropriate for a gas heater but not a solid wood heater which would have an affect on the house to the left of this property.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>  |
| Landscape Officer                            | <p><b>APPROVAL - subject to conditions</b></p> <p>This application is for the demolition of an existing residential dwelling, and the construction of a new residential dwelling.</p> <p>Councils Landscape Referral section has considered the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D12.10 Landscaped Area - Environmentally Sensitive Land</li> </ul> <p>A Landscape Plan is provided with the application and proposed works include the in-ground planting of small trees, shrubs, grasses and groundcovers, and the on-slab planting of low shrubs and groundcovers.</p> |

| Internal Referral Body           | Comments   |
|----------------------------------|--|
|                                  | <p>The Statement of Environmental Effects provided with the application notes that there are no significant trees on site, and that the proposal seeks to retain and enhance the existing low level vegetation towards the rear of the property. This is supported by the Site Survey provided as there appears to be no significant trees located on the site. It is however worth noting the Site Survey largely does not cover this dense vegetation area, and the presence of larger trees is not clear. Portions of this area appear to be removed in order to accommodate the terraced planters adjoining the proposed courtyard at the rear of the dwelling.</p> <p>The retention of this existing vegetation at the rear of the site is necessary to comply with control B4.22 and D12.20, as key objectives of these controls include "to protect and enhance the urban forest of the Northern Beaches", "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide", as well as the "conservation of natural vegetation and biodiversity".</p> <p>The proposed landscape works include a diverse planting mix of small trees, shrubs, grasses and groundcovers, provided a layered planting approach with the intention of softening and mitigating the height and bulk of the proposed development. Concern is raised regarding the use of <i>Rhaphiolepis indica</i> 'Oriental Pearl', as this species has been identified as an environmental weed and its use is therefore not supported. It is recommended that a locally native alternative be used instead. The completion of these landscape works as proposed on the Landscape Plans, inclusive of this species change, is vital to satisfy control C1.1, as key outcomes of this control seek to ensure the proposed built form is softened and complemented by landscaping, "landscaping reflects the scale and form of development", as well as to ensure "landscaping retains and enhances Pittwater's biodiversity by using locally native species".</p> <p>The landscape component of the proposal is therefore supported subject to the protect of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape Plans, inclusive of the aforementioned species change.</p> |
| NECC (Bushland and Biodiversity) | <p><b>APPROVAL - subject to conditions</b></p> <p>Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related provisions:</p> <ul style="list-style-type: none"> <li>• Pittwater LEP cl. 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP cl. B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor</li> </ul> <p>The proposed development does not include the removal of any prescribed trees, nor will it impact on nearby biodiversity.</p>  |



| Internal Referral Body      | Comments  |
|-----------------------------|---|
|                             | <p>The Statement of Environmental Effects (Allen de Carteret Architecture 2021) has sufficiently addressed the above listed biodiversity provisions and the Landscape Plan submitted with the application provides suitable native landscaping in accordance with P21DCP cl. B4.4. The SEE states that there are no significant trees proposed for removal, which seems to be supported by the Survey (Bee &amp; Lethbridge, April 2021) which has not identified any trees within proximity to the development.</p> <p>As such, Council's Biodiversity referrals team are satisfied that the proposed development complies with the relevant biodiversity provisions, subject to these conditions of consent.</p>  |
| NECC (Coast and Catchments) | <p><b>APPROVAL - no conditions</b></p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><b>Coastal Management Act 2016</b><br/>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b><br/>The subject land has been included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p>No other coastal related issues identified.</p> |



| Internal Referral Body         | Comments   |
|--------------------------------|--|
|                                | As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.   |
| NECC (Development Engineering) | <p><b>APPROVAL - subject to conditions</b></p> <p>The submitted stormwater design including OSD is satisfactory. The proposed driveway grade and width is also satisfactory. The submitted Geotechnical report addresses the relevant DCP controls.</p> <p>No objection to approval, subject to conditions as recommended.</p> |
| External Referral Body         | Comments   |
| Ausgrid: (SEPP Infra.)         | The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.   |
| Aboriginal Heritage Office     | The proposal was referred to the Aboriginal Heritage Office for further comment. In summary, there are no Aboriginal heritage issues for the proposed development.   |

#### 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. 1168288S\_04 and

dated 08 March 2021).

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

| Commitment      | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water           | 40              | 40       |
| Thermal Comfort | Pass            | Pass     |
| Energy          | 50              | 51       |

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

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

#### Comment:

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

### SEPP (Coastal Management) 2018

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

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

- (1) *The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
  - (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
  - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
  - (c) *the carrying out of any of the following:*

- (i) *earthworks (including the depositing of material on land),*
- (ii) *constructing a levee,*
- (iii) *draining the land,*
- (iv) *environmental protection works,*
- (d) *any other development.*

Comment:

Not applicable, as the site is not within coastal wetlands or littoral rainforests.

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

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

Comment:

Not applicable, as the subject site is not within proximity of coastal wetlands or littoral rainforest areas.

## 12 Development on land within the coastal vulnerability area

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

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

*anticipated  
coastal  
processes  
and  
current  
and  
future  
coastal  
hazards.*

Comment:

Not applicable.

### 13 Development on land within the coastal environment area

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

Comment:

The site is not identified within the coastal environment area.

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

Comment:

Not applicable.

### 14 Development on land within the coastal use area

- (1)

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

Comment:

The subject site is identified as being within the coastal use area.

(a) - Council is satisfied that subject to conditions the proposal will not cause any adverse impacts to the matters raised within (i)-(v).

(b) - The proposal has been appropriately designed and sited to avoid any adverse impacts referred to in paragraph (a).

(c) - The proposed built form is symptomatic of residential developments found within the Whale Beach locality.

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

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

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

Comment:

The proposal is not likely to cause increased risk of coastal hazards.

**Pittwater Local Environmental Plan 2014**

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



#### Principal Development Standards

| Standard             | Requirement | Proposed | Complies |
|----------------------|-------------|----------|----------|
| Height of Buildings: | 10.0m       | 8.3m     | Yes      |

#### Compliance Assessment

| Clause   | Compliance with Requirements |
|--|------------------------------|
| 1.9A Suspension of covenants, agreements and instruments | Yes                          |
| 2.7 Demolition requires development consent              | Yes                          |
| 4.3 Height of buildings                                  | Yes                          |
| 4.6 Exceptions to development standards                  | Yes                          |
| 5.10 Heritage conservation                               | Yes                          |
| 7.1 Acid sulfate soils                                   | Yes                          |
| 7.2 Earthworks   | Yes                          |
| 7.6 Biodiversity protection                              | Yes                          |
| 7.7 Geotechnical hazards                                 | Yes                          |
| 7.10 Essential services                                  | Yes                          |

#### Pittwater 21 Development Control Plan

##### Built Form Controls

| Built Form Control  | Requirement | Proposed  | % Variation*  | Complies           |
|---------------------|-------------|---|---------------|--------------------|
| Front building line | 6.5m        | 8.7m (Garage)<br>6.4 m (First floor balcony)<br>7.2m (Second Floor balcony)                               | 1.5%          | No                 |
| Rear building line  | 6.5m        | 26.1m (Mezzanine)   | N/A           | Yes                |
| Side building line  | 2.5m - East | 2.5m (Ground floor)<br>2.5m (First floor)<br>2.5m (Second Floor)<br>2.7m - 3.9m (Mezzanine)               | N/A           | Yes                |
|                     | 1.0m - West | 2.2m (Ground floor)<br>1.0m - 3.2m (First floor)<br>1.0m - 3.2m (Second Floor)<br>6.5m - 7.2m (Mezzanine) | N/A           | Yes                |
| Building envelope   | 3.5m - East | Within envelope   | N/A           | Yes                |
|                     | 3.5m - West | Outside envelope  | 34.3% - 42.9% | Yes<br>(Variation) |
| Landscaped area     | 60%         | 61.2% (505sqm)  | N/A           | Yes                |

#### Compliance Assessment

| Clause  | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted                             | Yes                          | Yes                         |
| A4.12 Palm Beach Locality   | No                           | Yes                         |
| B1.3 Heritage Conservation - General                                      | Yes                          | Yes                         |
| B1.4 Aboriginal Heritage Significance                                     | Yes                          | Yes                         |
| B3.1 Landslip Hazard  | Yes                          | Yes                         |
| B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor | Yes                          | Yes                         |
| B4.22 Preservation of Trees and Bushland Vegetation                       | Yes                          | Yes                         |
| B5.15 Stormwater  | Yes                          | Yes                         |
| B6.1 Access driveways and Works on the Public Road Reserve                | Yes                          | Yes                         |
| B6.2 Internal Driveways   | Yes                          | Yes                         |
| B6.3 Off-Street Vehicle Parking Requirements                              | Yes                          | Yes                         |
| B8.1 Construction and Demolition - Excavation and Landfill                | Yes                          | Yes                         |
| B8.3 Construction and Demolition - Waste Minimisation                     | Yes                          | Yes                         |
| B8.5 Construction and Demolition - Works in the Public Domain             | Yes                          | Yes                         |
| B8.6 Construction and Demolition - Traffic Management Plan                | Yes                          | Yes                         |
| C1.1 Landscaping  | Yes                          | Yes                         |
| C1.2 Safety and Security  | Yes                          | Yes                         |
| C1.3 View Sharing   | Yes                          | Yes                         |
| C1.4 Solar Access   | Yes                          | Yes                         |
| C1.5 Visual Privacy   | Yes                          | Yes                         |
| C1.6 Acoustic Privacy   | Yes                          | Yes                         |
| C1.7 Private Open Space   | Yes                          | Yes                         |
| C1.12 Waste and Recycling Facilities                                      | Yes                          | Yes                         |
| C1.19 Incline Passenger Lifts and Stairways                               | Yes                          | Yes                         |
| C1.23 Eaves   | Yes                          | Yes                         |
| C1.25 Plant, Equipment Boxes and Lift Over-Run                            | Yes                          | Yes                         |
| D12.1 Character as viewed from a public place                             | Yes                          | Yes                         |
| D12.3 Building colours and materials                                      | Yes                          | Yes                         |
| D12.5 Front building line   | No                           | Yes                         |
| D12.6 Side and rear building line   | Yes                          | Yes                         |
| D12.8 Building envelope   | No                           | Yes                         |
| D12.10 Landscaped Area - Environmentally Sensitive Land                   | Yes                          | Yes                         |
| D12.12 Fences - Flora and Fauna Conservation Areas                        | Yes                          | Yes                         |
| D12.13 Construction, Retaining walls, terracing and undercroft areas      | Yes                          | Yes                         |
| D12.14 Scenic Protection Category One Areas                               | Yes                          | Yes                         |

Detailed Assessment

#### **A4.12 Palm Beach Locality**

The development is generally consistent with the desired character statement of the Palm Beach Locality with exception of the dwelling being three storey.

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

The 'third' storey element is a result of the basement carparking, which is a site specific response to providing adequate access, while maintaining compatible with the natural landform and surrounding residential development. In addition, sites situated along the northern side of Whale Beach Road similarly display two storey developments atop of basement carparking, including Nos. 262, 264, 274, and 278 Whale Beach Road. In addition, the proposal has made clear attempts to limit the extent of excavation to only what is required to provide sufficient access to the garage level. Overall, the dwelling appropriately responds to the topography of the site, while minimising excavation.

In this regard, the built form will sit comfortably with surrounding two, three and four storey residential developments. Further, proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape.

On balance, the proposal is considered consistent with the desired future character of the Palm Beach locality.

#### **B8.1 Construction and Demolition - Excavation and Landfill**

The proposal includes excavation exceeding 1.5 metres in depth. In order to address the requirements of this clause, the Applicant submitted a Geotechnical Report and certified forms 1 and 1A. Furthermore, Council's Development Engineer reviewed these documents, and raised no objections, subject to conditions as recommended.

#### **C1.3 View Sharing**

Priority views of Whale Beach are obtained from the subject site in the southern direction. Therefore, the proposal will not unreasonably reduce the views experienced by the properties adjoining the sides of the subject site, in particular, Nos. 264 and 268 Whale Beach Road. In relation, to properties to the rear of the development they are situated much higher than the proposed ridge height. Overall, a reasonable sharing of view will be achieved by the proposal.

#### **C1.5 Visual Privacy**

##### Description of Non-compliance

Clause C1.5 of the P21DCP stipulates that private open space areas and windows of adjoining properties are to be protected from direct overlooking within 9.0m by building layout, landscaping, screening devices or greater spatial separation. The proposed development contains elevated balconies and side facing windows that are within 9.0m from western (No.264 Whale Beach Road) neighbour.

A submission has been raised from No.264 Whale Beach Road regarding privacy impacts of the proposed; western windows, balconies, and rear courtyard.

##### Merit Assessment

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

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

#### **No.264 Whale Beach Road**

##### Windows

The proposal includes limited glazing on the western elevation and has used appropriate screening when required. In addition, the proposed dwelling provides a compliant western side setback, which gradually increases as the dwelling progresses upslope (north) to avoid any unreasonable overlooking into No.264 Whale Beach Road's private open space and internal living areas. Furthermore, the concerned dwelling does contain windows on its eastern elevation. Overall, it is considered that the proposed windows have been adequately designed to optimise visual privacy.

##### Balconies

The proposal involves balconies to the first and second levels, which include appropriate privacy screens to prevent casual overlooking into the adjoining sites. Further, screening is not considered necessary as the works will be orientated away from the concerned dwelling and will reasonably maintain neighbouring amenity.

##### Courtyard

The proposed rear courtyard has a varied western side setback between 1.9m - 3.5m, which exceeds the minimum requirements of this control. Furthermore, the proposal involves a raised planter bed within the western side setback, which will provide a sufficient landscape buffer between the proposed outdoor living areas and the concerned site. In addition, the covered outdoor spaces are centrally located on the site, which provides reasonable amenity outcomes to adjoining sites.

- *A sense of territory and safety is provided for residents.*

##### Comment:

The proposed development is considered capable of providing a sense of territory and safety for residents on the subject site and adjoining properties.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit, subject to conditions.

#### **D12.5 Front building line**

##### Description of Non-Compliance

The minimum front building line is 6.5m for the site. The proposal involves constructing planter boxes to the first floor balconies, which will be set back 6.4m from the front boundary.

##### Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below:

- *Achieve the desired future character of the Locality.*

Comment:

The subject site is relatively constrained by the slope of the site. This is a common constraint for the nearby properties and has resulted in a prevalence of built form located towards the street front boundary. The proposal will remain consistent with the nearby development and will maintain the streetscape character of the locality.

The natural environment in proximity to the site is dominated by trees and remnant vegetation with houses built on elevated structures and garages close to the road due to the steep terrain.

The proposal also enhances landscaping within the site, and along the front boundary to soften the built form. This is adequate to ensure the landscape character is maintained and the built form does not impose on the public spaces. The proposal is of a suitable design when considering the site constraints and the nearby development.

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

Comment:

The proposal will not result in the loss of views.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

The site does not adjoin a main road.

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

Comment:

The submitted landscape plan involves enhancing the site's natural features, through providing a compliant landscaped area and incorporating substantial planting across the site. Additionally, the proposed planter boxes provide sufficient treatment to the façade, such that the visual impact of the built form is mitigated, when viewed from the street. Overall, it is considered that the proposed landscape design will be predominant feature of the site, thereby reducing the visual impact of the built form, when viewed from the street.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:

Sufficient space is provided within the front setback to facilitate vehicle manoeuvring in a forward direction.

- *To preserve and enhance the rural and bushland character of the locality.*

Comment:

The bushland character of the locality is maintained by concentrating landscape elements in the front and rear setbacks, including canopy trees and natural ground surfaces for the native landscaping understorey.



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

Comment:

The established building line along the northern side of Whale Beach Road is relatively varied due to the subdivision pattern, access, and topography of the area. As such, built form is commonly seen within the front setback. The design is keeping with the height of the natural environment as it sits below the height of surrounding canopy trees.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The proposal involves demolishing the existing structures on the site, which include a dilapidated carport and weatherboard cottage that are situated within the front setback. The proposed dwelling will provide a compliant front building line, while incorporating substantial planting within the front setback to minimise the built form. Overall, the proposal will encourage attractive street frontages and pedestrian amenity.

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

Comment:

The works respond to the spatial characteristics of the existing urban environment which is a steep site. Therefore, the proposal's location is consistent with considerations to develop the site in an appropriate manner for the zone and meet the urban living needs of the occupants.

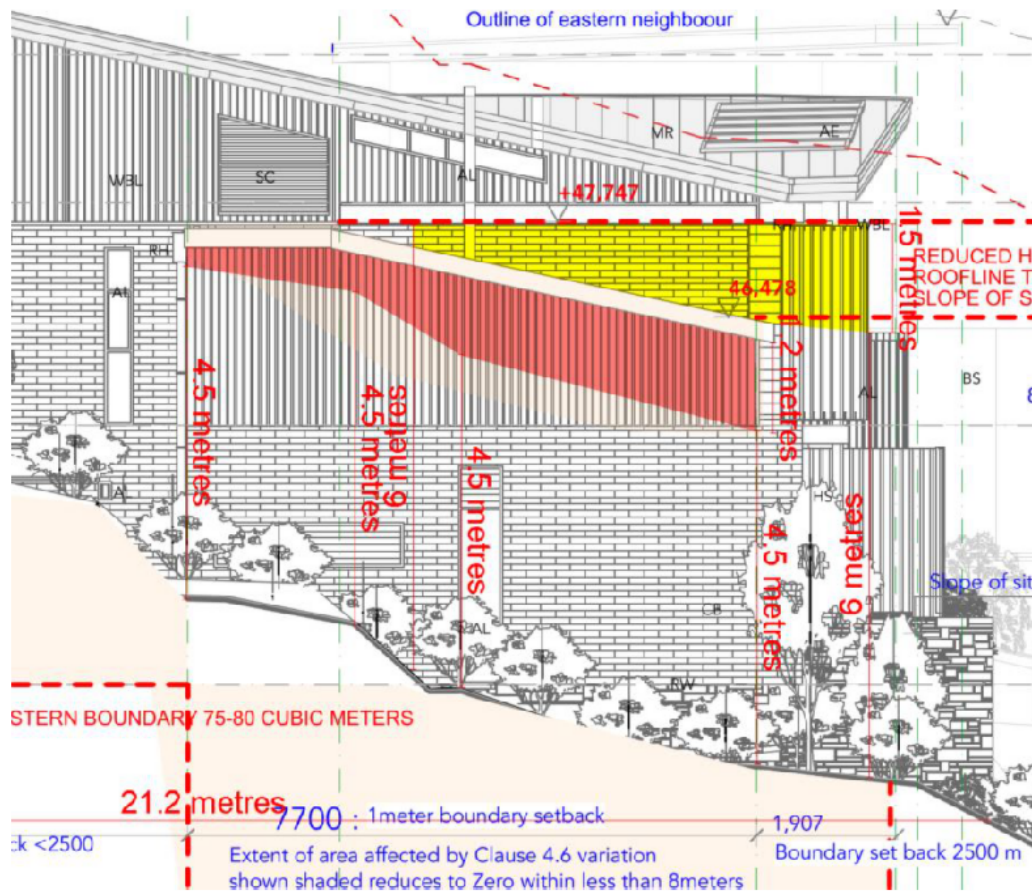
Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this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

## **D12.8 Building envelope**

### Description of Non-Compliance

Clause D12.8 of the P 21 DCP prescribes a 3.5m side building envelope, but permits a variation to that envelope where the building footprint is situated on a slope of 16.7 degrees or more, which is relevant to the subject site.

The proposal has two encroachments of the western side boundary building envelope, with a maximum height of encroachment being 1.5m. The extent of encroachments is displayed in red and yellow on the below diagrams:



## Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below:

- *Achieve the desired future character of the Locality.*

Comment:

Notwithstanding the encroachments to the building envelope, the proposal is deemed to achieve the desired future character of the Palm Beach Locality.

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

Comment:

The subject site does not contain any distinguishable canopy trees that define the natural environment. Notwithstanding, the proposed dwelling provides a compliant building height, which is compatible with the locality's established building scale and density. In addition, the proposal involves a comprehensive landscaping design, which will enhance the site's natural features. Overall, the works as a whole improve the streetscape.

- *To ensure new development responds to, reinforces and sensitively relates to spatial*

*characteristics of the existing natural environment.*

Comment:

The building appropriately steps up the land, while including a roof line that sensitively responds to the slope of the land. In addition, the proposal achieves reasonable compliance with P21DCP setback controls, which is symptomatic of a development compatible with the existing spatial characteristics of the surrounding environment. Further, the proposal has made clear attempts within its amended design to limit the extent of excavation required within the western setback area, which in turn provides sufficient opportunities for deep soil landscaping.

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

Comment:

The proposal incorporates various materials and varied setbacks to provide visual breaks along the western elevation. In addition, the proposed landscape design is considered to enhance the site's natural features, through minimising the visual impact of the built form, such that it is secondary to landscaping and vegetation. Overall, the proportions of the encroaching elements are not considered to be unreasonably scaled or bulky.

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

Comment:

The encroachments sought into the side building envelope do not detract from the provision of views currently enjoyed.

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

Comment:

The western elevation at the point of encroachment does not contain any windows, nor is it located near any adjoining private open space areas. In this regard the encroachment sought does not detract from the amenity of adjacent land.

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

Comment:

The proposal retains and enhances a satisfactory degree of vegetation as assessed elsewhere in this report.

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

## **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 \$28,570 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,857,030.

## **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

The subject site currently contains a two storey dwelling. The proposal seeks consent for the construction of a new dwelling with basement carparking.

The development includes several non-compliances, including a breach of the side boundary envelope and front building line.

The proposal attracted eight submissions to the formal notification.

This assessment has concluded that the non-compliances are reasonable.



Overall, the proposal will be an upgrade to the existing dwelling, while satisfying the objectives of the zone and being consistent with character of the locality.

Accordingly, the application is recommended for approval subject to conditions.  
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/0419 for Demolition works and construction of a dwelling house on land at Lot 221 DP 15376, 266 Whale Beach Road, WHALE BEACH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Certificate of Compliance**

Provide Council a certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements.

Reason: To ensure the system operates in a legislatively compliant manner.

2. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp |               |                |
|---|---------------|----------------|
| Drawing No.   | Dated         | Prepared By    |
| DA004 - Rev01: Site plan                            | 30 March 2021 | Studio_deCARTA |
| DA100 - Rev01: Ground floor plan                    | 02 July 2021  | Studio_deCARTA |
| DA101 - Rev01: First floor plan                     | 02 July 2021  | Studio_deCARTA |
| DA102 - Rev01: Second floor plan                    | 02 July 2021  | Studio_deCARTA |
| DA103 - Rev01: Mezzanine/clearstory plan            | 02 July 2021  | Studio_deCARTA |
| DA104 - Rev01: Roof plan                            | 02 July 2021  | Studio_deCARTA |
| DA200 - Rev01: Section north - south                | 02 July 2021  | Studio_deCARTA |
| DA201 - Rev01: Section north - south at stairway    | 02 July 2021  | Studio_deCARTA |
| DA202 - Rev01: Section east - west                  | 02 July 2021  | Studio_deCARTA |
| DA203 - Rev01: Section east - west 2                | 02 July 2021  | Studio_deCARTA |
| DA204 - Rev01: Driveway concept plan                | 02 July 2021  | Studio_deCARTA |
| DA300 - Rev01: West elevation                       | 02 July 2021  | Studio_deCARTA |
| DA301 - Rev01: South elevation                      | 02 July 2021  | Studio_deCARTA |
| DA303 - Rev01: North elevation                      | 02 July 2021  | Studio_deCARTA |



|                               |              |                |
|-------------------------------|--------------|----------------|
| DA304 - Rev01: East elevation | 02 July 2021 | Studio_deCARTA |
|-------------------------------|--------------|----------------|

| Engineering Plans                 |            |                      |
|-----------------------------------|------------|----------------------|
| Drawing No.                       | Dated      | Prepared By          |
| C3.01:Stowamwater management plan | March 2021 | ACOR Consultants P/L |

| Reports / Documentation – All recommendations and requirements contained within: |              |                |
|--|--------------|----------------|
| Report No. / Page No. / Section No.  | Dated        | Prepared By    |
| Geotechnical Assessment  | 07 July 2020 | 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:

| Landscape Plans                     |               |              |
|-------------------------------------|---------------|--------------|
| Drawing No.                         | Dated         | Prepared By  |
| L101 Rev C: Landscape Planting Plan | 10 March 2021 | Spirit Level |

| Waste Management Plan |               |                      |
|-----------------------|---------------|----------------------|
| Drawing No/Title.     | Dated         | Prepared By          |
| Waste Management Plan | 16 March 2021 | Matthews Contracting |

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

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

### 3. Compliance with Other Department, Authority or Service Requirements

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

| Other Department, Authority or Service | EDMS Reference            | Dated       |
|--|---------------------------|-------------|
| Ausgrid                                | Response Ausgrid Referral | 10 May 2021 |
| Aboriginal Heritage Office (AHO)       | Response AHO Referral     | 10 May 2021 |

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

### 4. Prescribed Conditions

(a) All building works must be carried out in accordance with the requirements of the

Building Code of Australia (BCA).

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

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

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

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

Reason: Legislative requirement.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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



**FEES / CHARGES / CONTRIBUTIONS****6. Policy Controls****Northern Beaches 7.12 Contributions Plan 2019**

A monetary contribution of \$28,570.30 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,857,030.00.

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](http://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 \$5,000 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](http://www.northernbeaches.nsw.gov.au)).

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



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

The applicant is to lodge a bond of \$1,000 as security against any damage to Council's stormwater drainage infrastructure adjoining the site as part of this consent.

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

Reason: Protection of Council's infrastructure.

9. **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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JK Geotechnics dated 7 July 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Traffic Management and Control**

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

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

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management Policy and generally in accordance with the concept drainage plans prepared by ACOR

Consultants Pty Ltd, drawing number NSW201744 C1.01, C1.02, C1.05, C1.06, C1.07 and C3.01 Issue A dated 26.03.21. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. A second access grate is to be provided in the diagonally opposite corner of the OSD tank to improve future maintenance
2. Details of the connection to the Council stormwater pit. (Note a separate Section 68 application is to be submitted to Council for this connection).

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.

**13. 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.

**14. Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

**15. 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.

16. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the stormwater connection from the site to the existing Council stormwater pit in Whale Beach Road which is to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au) > Council Forms > Stormwater Drainage Application Form.s

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

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

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

17. **Compliance with Standards**

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

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

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

18. **Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

20. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties:

- o No. 264 Whale Beach Road

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

21. **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.

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.

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. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,



- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

24. **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.

25. **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.

26. **Demolition Works - Asbestos**

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

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

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

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

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

27. **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.

28. **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.

29. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

30. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/6 MH 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**

31. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive

of the following conditions:

i) substitute the proposed *Rhaphiolepis indica* 'Oriental Pearl' with a locally native alternative. Suggested species include: *Lomandra longifolia* 'Tanika', *Rhagodia spinescens* or *Westringia fruticosa* (all proposed elsewhere on site).

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.

32. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified on the NSW WeedWise website) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

33. **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.

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

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA), 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 as to user 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 stormwater 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.

35. **Geotechnical Certification Prior to Occupation Certificate**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

36. **House / Building Number**

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

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

Reason: Proper identification of buildings.

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

37. **Landscape Maintenance**

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

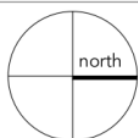
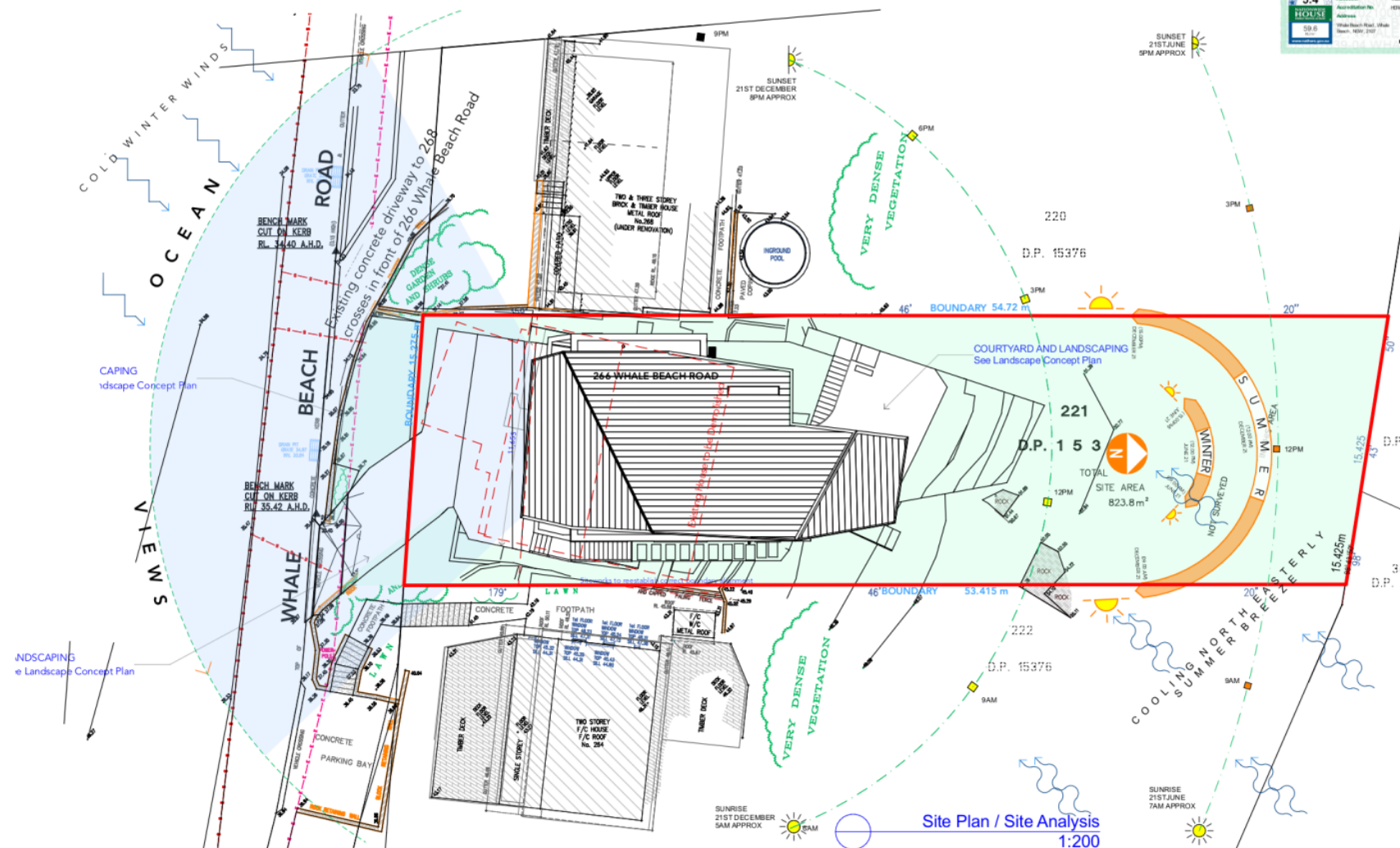
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

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.





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Allen de Carteret\_Architecture NSW ABR # 5283 decarta@mac.com 0419 231 530  
Studio 5 : Level 4 : 68-72 Wentworth Avenue Surry Hills NSW 2010

Drawn: AdeC  
Plot Date: 30/3/21  
Project NO.: WBR002  
Project Status: DEVELOPMENT APPLICATION  
Client: Celia Hooper  
266 WHALE BEACH ROAD  
Site: WHALE BEACH NSW 2107

**NOTE**  
The Builder shall check all dimensions and levels on site prior to construction.  
Notifiy any errors, discrepancies or omissions to the architect. Refer to written dimensions only. Do not scale drawings. Drawings shall not be used for construction purposes until issued for construction. This drawing reflects a design by studio\_decarta and is to be used only for work when authorised in writing by studio\_decarta  
  
All boundaries and contours are subject to survey drawing **W-01**. All levels to Australian Height Data. It is the contractors responsibility to confirm all measurements on site and locations of any services prior to work on site.  
  
All documents here within are subject to Australian Copyright Laws.

DRAWING: **General**  
Site Plan /Site Analysis

PROJECT :  
**266 WHALE BEACH ROAD**

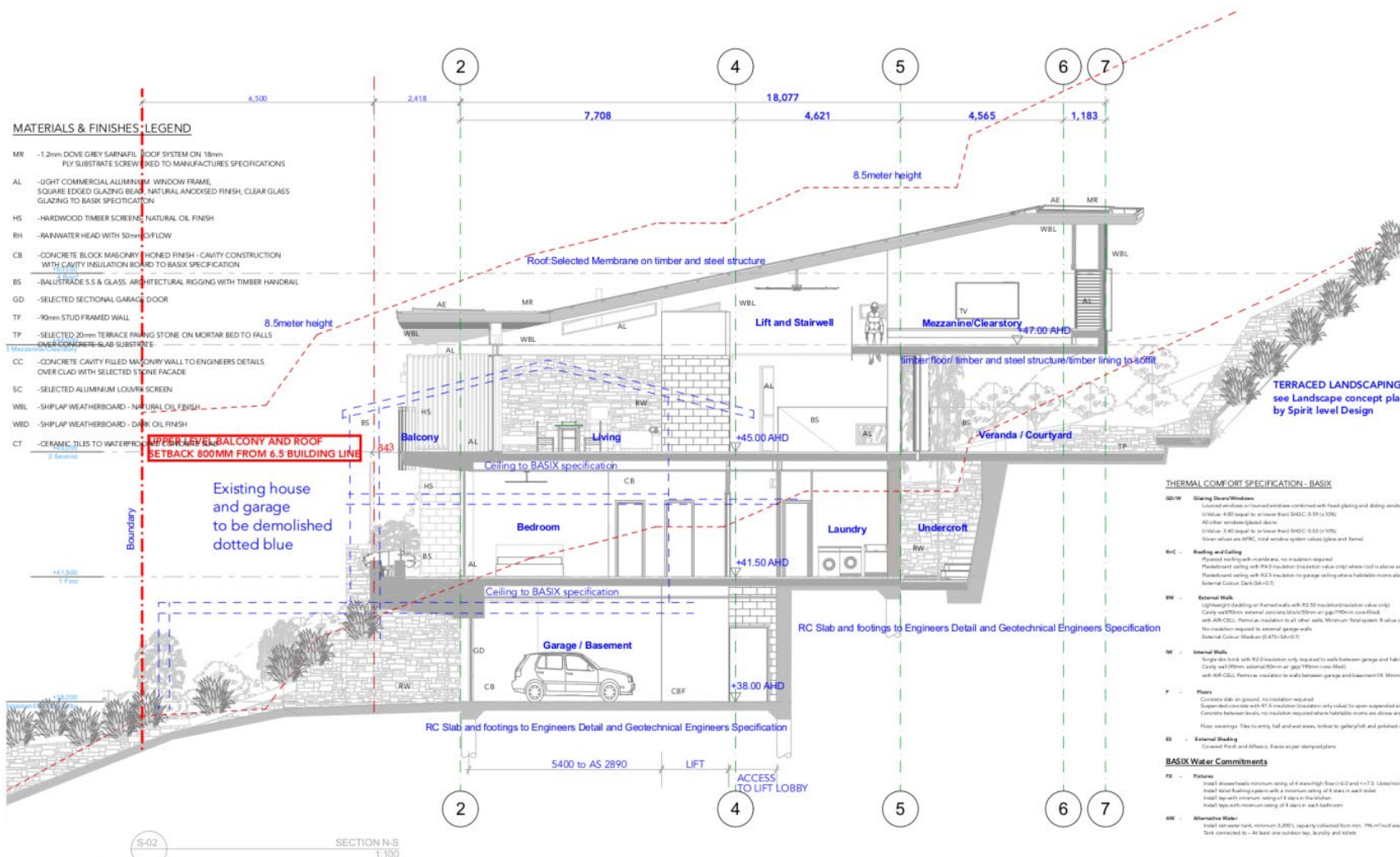
REVISION NO.

01

DRAWING NO.

DA 004





**THERMAL COMFORT SPECIFICATION - BASIX**

**DD-W Glazing Doors/Windows:**  
Glazed windows or glazed doors combined with fixed glazing and sliding windows:  
U-Value: 4.80 (equal to or lower than) SHGC: 0.59 (x10%)  
All other windows (fixed doors):  
U-Value: 3.40 (equal to or lower than) SHGC: 0.53 (x10%)  
Given values are AFRC, total window system values (glaze and frame)

**R+C Roofing and Ceiling:**  
R+Ceiling: Ceiling with no insulation required  
Roof: Roof with R4.0 insulation (insulation value only) where roof is above eave  
Roof: Roof with R2.0 insulation to garage ceiling where habitable rooms above  
Roof: Roof with R2.0 insulation to garage ceiling where habitable rooms above  
Roof: Roof with R2.0 insulation to garage ceiling where habitable rooms above

**EW External Walls:**  
Lightweight building on framed walls with R2.0 insulation (insulation value only)  
Cavity wall (minimum external cavity 50mm or gap 100mm) with R2.0 insulation to all other walls. Minimum total system R value of 2.0  
No insulation required to external garage walls  
Roof: Roof with R2.0 insulation to garage ceiling where habitable rooms above

**IW Internal Walls:**  
Single skin brick with R2.0 insulation only required to walls between garage and habitable  
Cavity wall (minimum external cavity 50mm or gap 100mm) with R2.0 insulation to all other walls. Minimum total system R value of 2.0  
No insulation required to walls between garage and habitable rooms

**F Floors:**  
Concrete slab on ground, no insulation required  
Suspended concrete with R1.0 insulation (insulation value only) to open suspended areas  
Concrete between levels, no insulation required where habitable rooms are above and to  
Floor coverings: Tiles to entry hall and wet areas, timber to gallery/lift and polished concrete

**ES External Shading:**  
Covered Porch and Terrace. Eaves as per winged plans

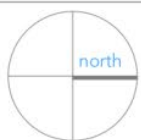
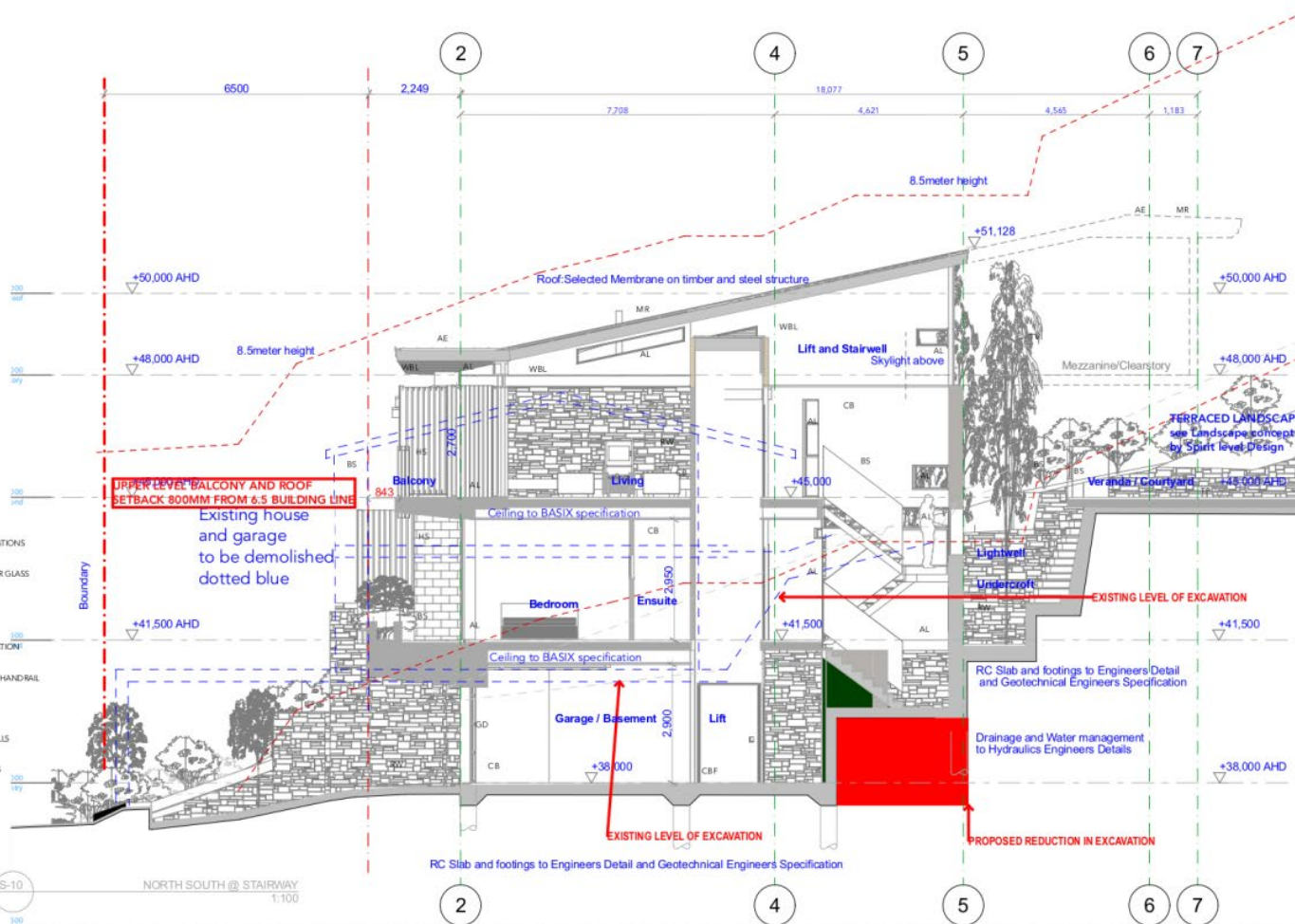
**BASIX Water Commitments**

**EX Fixtures:**  
Install showerheads, maximum rating of 4 litres/min flow (1/2" and 1/2" x 1/2")  
Install toilet flushing system with a maximum rating of 4 litres in each toilet  
Install tap with maximum rating of 4 litres in the kitchen  
Install tap with maximum rating of 4 litres in each bathroom

**AW Alternative Water:**  
Install rainwater tank, minimum 3,000L capacity collected from rain. 100m<sup>2</sup> roof area.  
Tank connected to: At least one available tap, laundry and toilet.

**MATERIALS & FINISHES LEGEND**

- MR -1.2mm DOVE GREY SARNARIL ROOF SYSTEM ON 18mm  
Ply SUBSTRATE SCREW-FIXED TO MANUFACTURES SPECIFICATIONS
- AL -LIGHT COMMERCIAL ALUMINIUM WINDOW FRAME,  
SQUARE EDGED GLAZING BEAD, NATURAL ANODISED FINISH, CLEAR GLASS  
GLAZING TO BASIX SPECIFICATION
- HS -HARDWOOD TIMBER SCREENS- NATURAL OIL FINISH
- RH -RAINWATER HEAD WITH 50mm O/FLOW
- CB -CONCRETE BLOCK MASONRY - HONED FINISH - CAVITY CONSTRUCTION  
WITH CAVITY INSULATION BOARD TO BASIX SPECIFICATION
- BS -BALUSTRADE S.S & GLASS ARCHITECTURAL RIGGING WITH TIMBER HANDRAIL
- GD -SELECTED SECTIONAL GARAGE DOOR
- TF -90mm STUD FRAMED WALL
- TP -SELECTED 20mm TERRACE PAVING STONE ON MORTAR BED TO FALLS  
OVER CONCRETE SLAB SUBSTRATE
- CC -CONCRETE CAVITY FILLED MASONRY WALL TO ENGINEERS DETAILS  
OVER GLAD WITH SELECTED STONE FACADE
- SC -SELECTED ALUMINIUM LOUVRE SCREEN
- WBL -SHIP LAP WEATHERBOARD - NATURAL OIL FINISH
- WBD -SHIP LAP WEATHERBOARD - DARK OIL FINISH
- CT -CERAMIC TILES TO WATERPROOFED CONCRETE SLAB



studio\_deCARTA



Allen de Carteret Architecture NSW ABR # 5283 decarta@mac.com 0419 231 530  
Studio 5 - Level 4 - 68-72 Wentworth Avenue - Surry Hills NSW 2010

Drawn: AdeC  
Plot Date: 2/7/21  
Project NO: WBR0002  
Project Status: DEVELOPMENT APPLICATION  
Client: Celia Hooper  
266 WHALE BEACH ROAD  
WHALE BEACH NSW 2107

**NOTE**  
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DRAWING: **DA Sections**  
North South Section at Stairway  
PROJECT: **266 WHALE BEACH ROAD**

REVISION NO.  
**01**  
DRAWING NO.  
**DA 201**



# THERMAL COMFORT SPECIFICATION - BASIX

**DD-W Glazing Doors/Windows**  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 All other windows (glazed doors)  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 Given values are AFRC, total window system values (glaze and frame)

**R+C Roofing and Ceiling**  
 R-Value: 1.00 (equal to or greater than) (SHGC: 0.59 (x100))  
 R-Value: 1.00 (equal to or greater than) (SHGC: 0.59 (x100))  
 Given values are AFRC, total window system values (glaze and frame)

**EW External Walls**  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 All other walls (glazed doors)  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 Given values are AFRC, total window system values (glaze and frame)

**IW Internal Walls**  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 All other walls (glazed doors)  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 Given values are AFRC, total window system values (glaze and frame)

**F Floors**  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 All other floors (glazed doors)  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 Given values are AFRC, total window system values (glaze and frame)

**ES External Shading**  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 All other external shading (glazed doors)  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 Given values are AFRC, total window system values (glaze and frame)

## BASIX Water Commitments

**EW External Water**  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 All other external water (glazed doors)  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 Given values are AFRC, total window system values (glaze and frame)

**AW Alternative Water**  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 All other alternative water (glazed doors)  
 U-Value: 1.80 (equal to or lower than) (SHGC: 0.59 (x100))  
 Given values are AFRC, total window system values (glaze and frame)

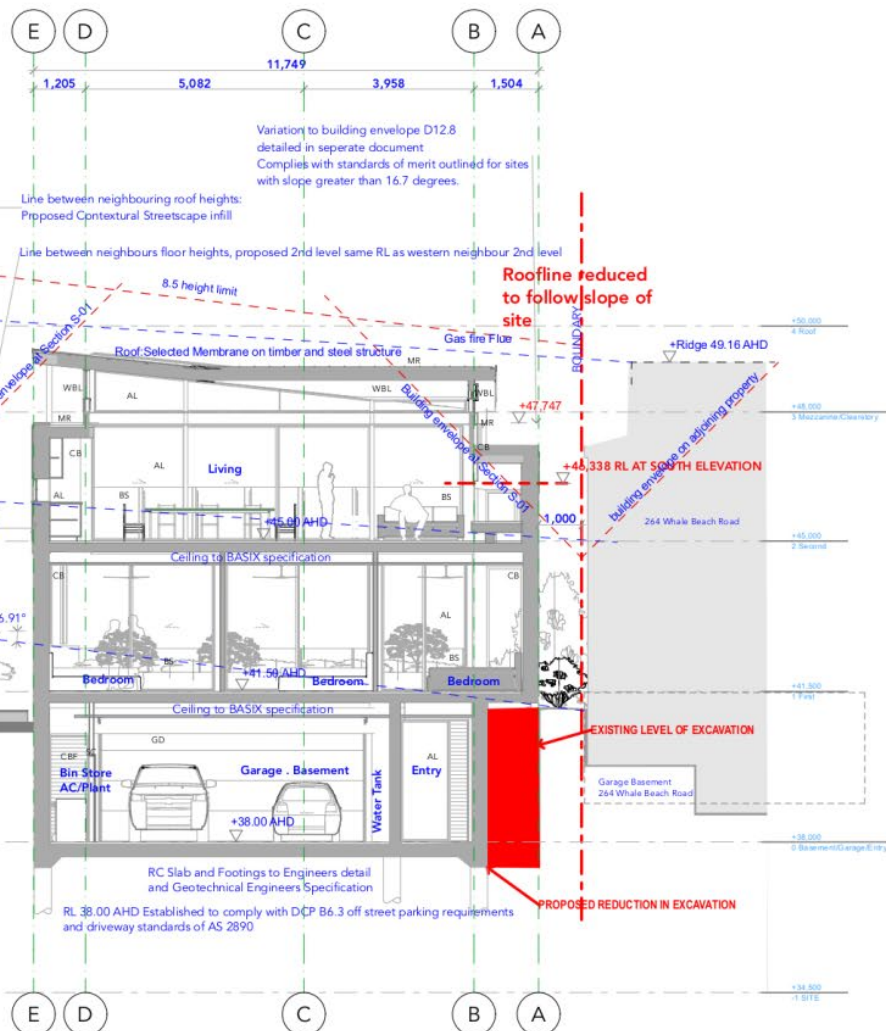
## MATERIALS & FINISHES LEGEND

- MR - 1.2mm DOVE GREY SARNIAL ROOF SYSTEM ON 18mm  
Ply SUBSTRATE SCREW-FIXED TO MANUFACTURES SPECIFICATIONS
- AL - LIGHT COMMERCIAL ALUMINIUM WINDOW FRAME,  
SQUARE EDGED GLAZING BEAD, NATURAL ANODISED FINISH, CLEAR GLASS  
GLAZING TO BASIX SPECIFICATION
- HS - HARDWOOD TIMBER SCREENS - NATURAL OIL FINISH
- RH - RAINWATER HEAD WITH 50mm O/FLOW
- CB - CONCRETE BLOCK MASONRY - HONED FINISH - CAVITY CONSTRUCTION  
WITH CAVITY INSULATION BOARD TO BASIX SPECIFICATION
- BS - BALUSTRADE S.S & GLASS ARCHITECTURAL RIGGING WITH TIMBER HANDRAIL
- GD - SELECTED SECTIONAL GARAGE DOOR
- TF - 90mm STUD FRAMED WALL
- TP - SELECTED 20mm TERRACE PAVING STONE ON MORTAR BED TO FALLS  
OVER CONCRETE SLAB SUBSTRATE
- CC - CONCRETE CAVITY FILLED MASONRY WALL TO ENGINEERS DETAILS  
OVER GLAZ WITH SELECTED STONE FACADE
- SC - SELECTED ALUMINIUM LOUVER SCREEN
- WBL - SHIP LAP WEATHERBOARD - NATURAL OIL FINISH
- WBD - SHIP LAP WEATHERBOARD - DARK OIL FINISH
- CT - CERAMIC TILES TO WATERPROOFED CONCRETE SLAB

S-01

SECTION E-W  
1:100

+34.500  
-1 SITE



## DA 203







**THERMAL COMFORT SPECIFICATION - BASIX**

- GD-W Glazing Doors/Windows**  
Glazed windows or framed windows combined with fixed glazing and sliding windows.  
U-value: 4.80 equal to or lower than SHGC: 0.59 (x10%)  
All other windows glazed doors  
U-value: 3.40 equal to or lower than SHGC: 0.53 (x10%)  
Given values are AFRC, total window system values (glass and frame)
- R+C Roofing and Ceiling**  
Raftered ceiling with membrane, no insulation required.  
Plasterboard ceiling with R4.0 insulation (insulation value only) where roof is above excluding garage.  
Plasterboard ceiling with R2.0 insulation to garage ceiling where habitable rooms above.  
External Colour: Dark (SA-0.7)
- EW External Walls**  
Lightweight building on framed walls with R2.00 insulation (insulation value only).  
Cavity wall/100mm external concrete block/50mm air gap/100mm external wall with AIR-CELL. Perimeter insulation to all other walls. Minimum Total system R value of R1.79.  
No insulation required to external garage walls.  
External Colour: Medium (SA-0.5)
- IW Internal Walls**  
Single skin brick with R2.0 insulation only required to walls between garage and habitable areas.  
Cavity wall/100mm external/50mm air gap/100mm concrete block with AIR-CELL. Perimeter insulation to walls between garage and habitable rooms.  
Minimum Total system R value of
- F Floors**  
Concrete slab on ground, no insulation required.  
Suspended concrete with R5.5 insulation (insulation value only) where suspended areas.  
Concrete between levels, no insulation required where habitable rooms are above and below.  
Floor coverings: Tiles to entry, hall and wet areas, timber to gallery/floor and polished concrete elsewhere.
- ES External Shading**  
Control Panel and Blinds. Slats open slanted plane.

**BASIX Water Commitments**

- PK Potable**  
Install showerheads minimum rating of 4 stars/high flow 0.8 and < 7.5 litres/min.  
Install toilet flushing system with a minimum rating of 4 stars in each toilet.  
Install taps with minimum rating of 4 stars in the kitchen.  
Install taps with minimum rating of 4 stars in each bathroom.

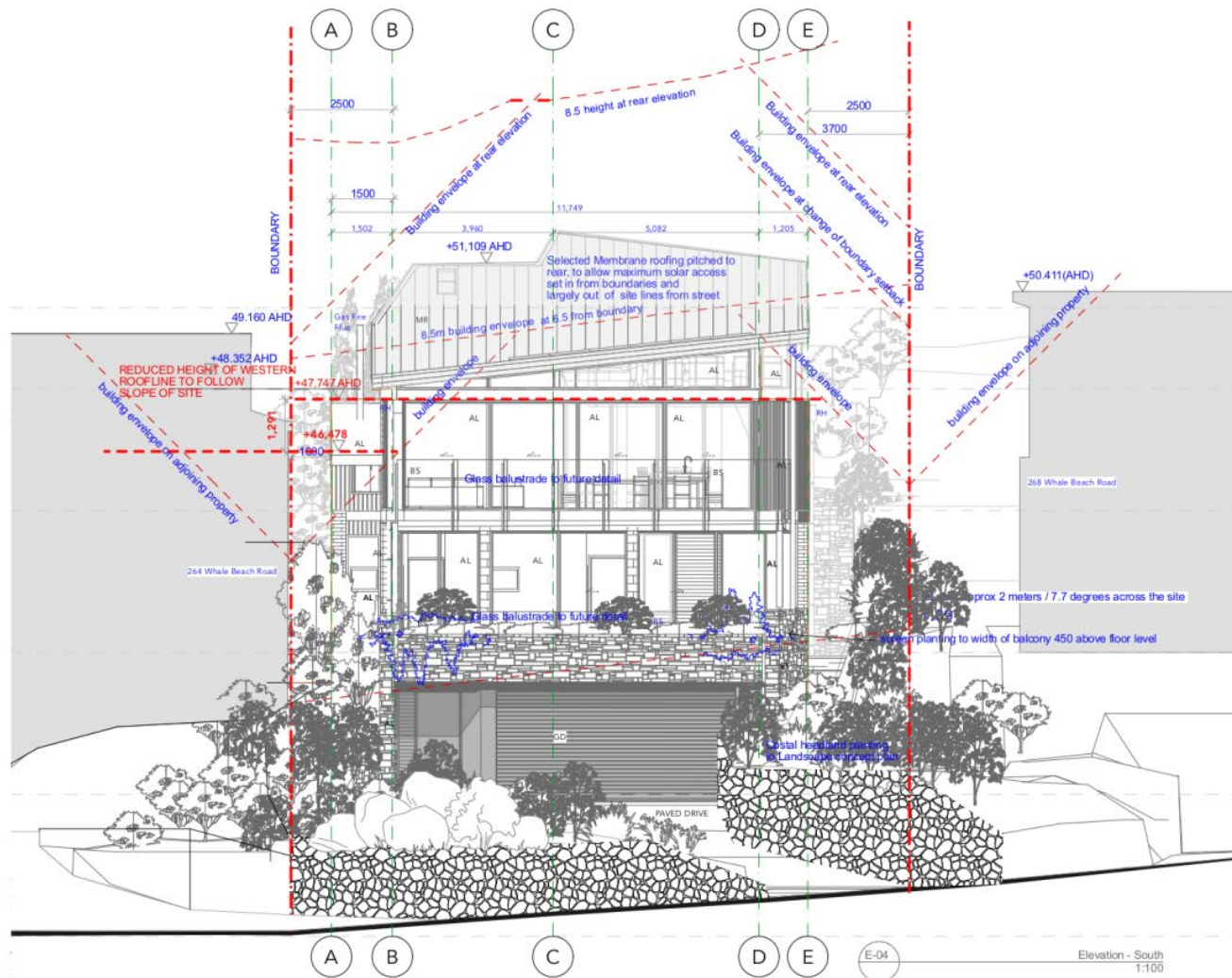
- AW Alternative Water**  
Install rainwater tank, minimum 3,000L capacity collected from roof, 10% of roof area.  
Tank connected to - At least one outdoor tap, laundry and toilet.

**BASIX Energy Commitments**

- HWS Hot Water System**  
(Gas storage not rated)
- CS Cooling System**  
3 phase air conditioning to living areas and bedrooms. EER 3.5/3.5.
- HS Heating system**  
3 phase air conditioning to living areas and bedrooms. EER 3.5/4.0.  
(Gas forced fluid heater not rated)
- V Ventilation**  
Kitchen, bathroom and laundry - Individual fan, externally ducted to roof or terrace, manual on/off switch.
- O Other**  
Induction cooktop & electric oven.  
Outdoor clothes drying line.  
Well ventilated refrigerator space.
- AE Alternative Energy**  
Minimum 100W photovoltaic system.

**MATERIALS & FINISHES LEGEND**

- MR** -1.2mm DOVE GREY SARNAPIL ROOF SYSTEM ON 18mm PLY SUBSTRATE SCREW FIXED TO MANUFACTURERS SPECIFICATIONS
- AL** -LIGHT COMMERCIAL ALUMINIUM WINDOW FRAME, SQUARE EDGED GLAZING BEAD, NATURAL ANODISED FINISH, CLEAR GLASS GLAZING TO BASIX SPECIFICATION
- HS** -HARDWOOD TIMBER SCREENS- NATURAL OIL FINISH
- RH** -RAINWATER HEAD WITH 50mm O/FLOW
- CB** -CONCRETE BLOCK MASONRY - HONED FINISH - CAVITY CONSTRUCTION WITH CAVITY INSULATION BOARD TO BASIX SPECIFICATION
- BS** -BALUSTRADE S.S & GLASS. ARCHITECTURAL RIGGING WITH TIMBER HANDRAIL
- GO** -SELECTED SECTIONAL GARAGE DOOR
- TP** -100mm STUD FRAMED WALL
- TP** -SELECTED 20mm TERRACE PAVING STONE ON MORTAR BED TO FALLS OVER CONCRETE SLAB SUBSTRATE
- CC** -CONCRETE CAVITY FILLED MASONRY WALL TO ENGINEERS DETAILS OVER CLAD WITH SELECTED STONE FACADE
- SC** -SELECTED ALUMINIUM LOUIRE SCREEN
- WBL** -SHIPLAP WEATHERBOARD - NATURAL OIL FINISH
- WBD** -SHIPLAP WEATHERBOARD - DARK OIL FINISH
- CT** -CERAMIC TILES TO WATERPROOFED CONCRETE SLAB



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Allen de Carteret Architecture NSW ABR # 5283 decarta@mac.com 0419 231 530  
Studio 5 - Level 4 - 68-72 Wentworth Avenue - Surry Hills - NSW - 2010

Drawn: AdeC  
Plot Date: 2/7/21  
Project NO: WBR0002  
Project Status: DEVELOPMENT APPLICATION  
Client: Celia Hooper  
266 WHALE BEACH ROAD  
WHALE BEACH NSW 2107  
Site:

**NOTE**  
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DRAWING: **DA Elevations**  
E-04 South Elevation

REVISION NO.  
**01**  
DRAWING NO.

PROJECT: **266 WHALE BEACH ROAD**

**DA 301**



**THERMAL COMFORT SPECIFICATION - BASIX**

- DD-W Glazing Doors/Windows**  
 Glazed windows or glazed doors combined with fixed glazing and sliding windows:  
 U-Value: 4.80 (equal to or lower than) SHGC: 0.59 (x 10%)  
 All other windows (fixed and sliding):  
 U-Value: 3.40 (equal to or lower than) SHGC: 0.53 (x 10%)  
 Given values are APTC, total window system values (glaze and frame)
- EW - External Walls**  
 Lightweight cladding on framed walls with R2.00 insulation (value only) where roof is above excluding garage.  
 Concrete walling with R2.00 insulation to garage ceiling where habitable rooms above.  
 External Colour: Dark (Max 0.7)
- EW - External Walls**  
 Lightweight cladding on framed walls with R2.00 insulation (value only).  
 Concre wall/brick external concrete block/brick or gap/100mm concrete block.  
 with AIR-CELL. Perimeter insulation to all other walls. Minimum Total system R value of R1.77.  
 No insulation required for external garage walls.  
 External Colour: Medium (0.45 to 0.60)
- EW - External Walls**  
 Single skin brick with R2.00 insulation only required to walls between garage and habitable areas.  
 Concre wall/brick external concrete block/brick or gap/100mm concrete block.  
 with AIR-CELL. Perimeter insulation to walls between garage and basement/10. Minimum Total system R value of R1.77.
- F - Floors**  
 Concrete slab on ground, no insulation required.  
 Suspended concrete with R1.5 insulation (value only) to open suspended areas.  
 Concrete between levels, no insulation required where habitable rooms are above and below.  
 Floor coverings: Tiles to entry hall and wet areas, timber to gallery/hall and polished concrete elsewhere.
- ES - External Shading**  
 Covered Porch and Terrace. Eaves as per designed plans.

**BASIX Water Commitments**

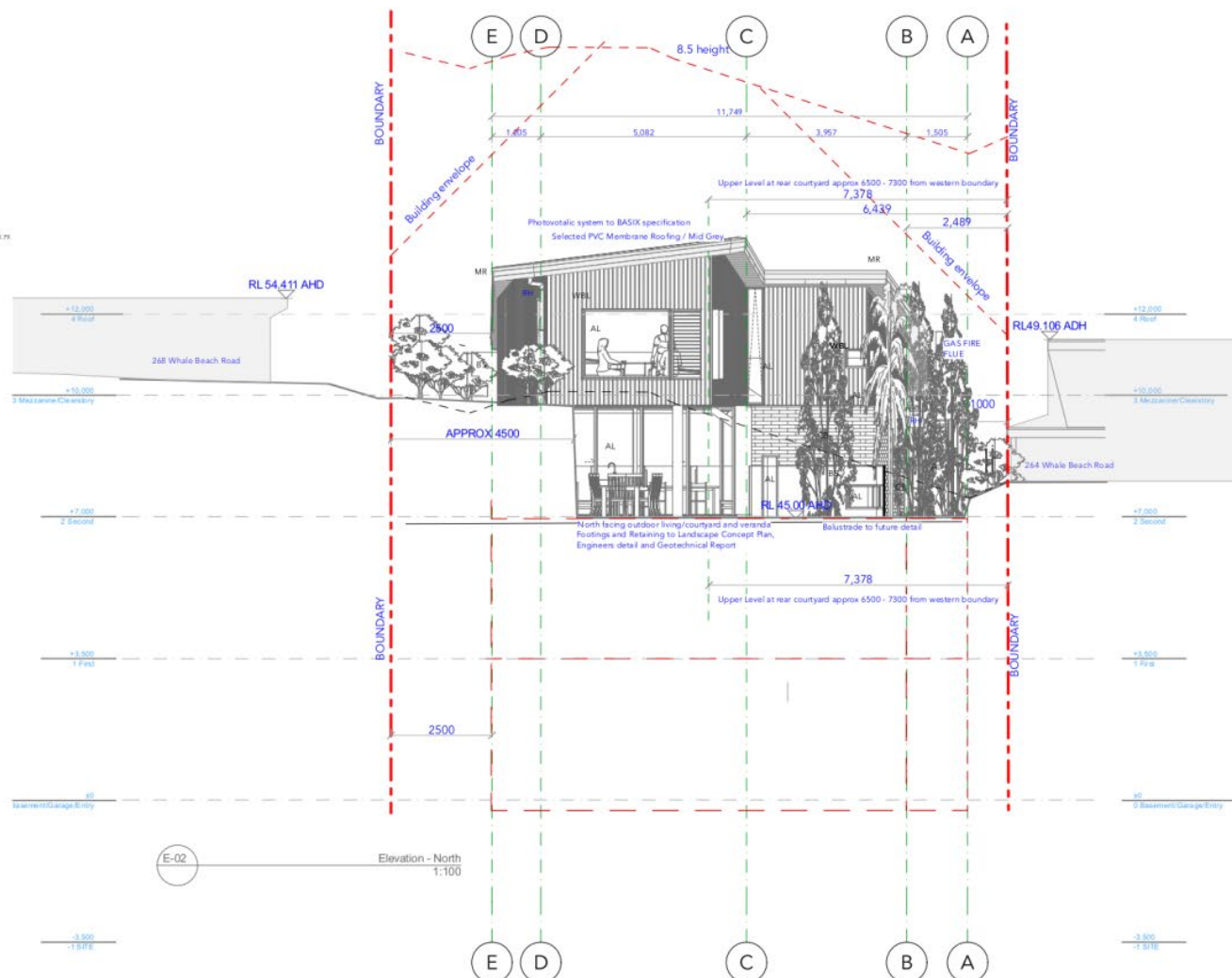
- EW - External Walls**  
 Install downpipes, minimum rating of 4 stars (high flow) and 4 stars (low flow).  
 Install toilet flushing system with a maximum rating of 4 stars in each toilet.  
 Install tap with minimum rating of 4 stars in the kitchen.  
 Install tap with minimum rating of 4 stars in each bathroom.
- AW - Alternative Water**  
 Install rainwater tank, minimum 3,000L capacity collected from rain, 100m<sup>2</sup> roof area.  
 Tank connected to an A1 rated one or more taps, laundry and toilet.

**BASIX Energy Commitments**

- HWS - Hot Water System**  
 Gas storage (no tankless)
- ES - External Shading**  
 Ceiling fan and 3 phase air conditioning to living areas and bedrooms. BSR 3.0-3.5
- HS - Heating system**  
 3 phase air conditioning to living areas and bedrooms. BSR 3.5-4.0.  
 Gas fired heat pump (no tankless)
- V - Ventilation**  
 Kitchen, bathroom and laundry - Individual fan, externally ducted to roof or facade, manual on/off switch.
- D - Other**  
 Induction cooktop & electric oven.  
 Outdoor clothes drying line.  
 Wall mounted refrigerator space.
- AE - Alternative Energy**  
 Minimum 100Wp photovoltaic system.

**MATERIALS & FINISHES - LEGEND**

- MR** - 1.2mm DOVE GREY SARNAPIL ROOF SYSTEM ON 18mm PLY SUBSTRATE SCREW FIXED TO MANUFACTURES SPECIFICATIONS
- AL** - LIGHT COMMERCIAL ALUMINIUM WINDOW FRAME, SQUARE EDGED GLAZING BEAD, NATURAL ANODISED FINISH, CLEAR GLASS GLAZING TO BASIX SPECIFICATION
- HS** - HARDWOOD TIMBER SCREENS- NATURAL OIL FINISH
- RH** - RAINWATER HEAD WITH 50mm O/FLOW
- CB** - CONCRETE BLOCK MASONRY - HONED FINISH - CAVITY CONSTRUCTION WITH CAVITY INSULATION BOARD TO BASIX SPECIFICATION
- BS** - BALUSTRADE S.S & GLASS, ARCHITECTURAL RIGGING WITH TIMBER HANDRAIL
- GD** - SELECTED SECTIONAL GARAGE DOOR
- TF** - 90mm STUD FRAMED WALL
- TP** - SELECTED 20mm TERRACE PAVING STONE ON MORTAR BED TO FALLS OVER CONCRETE SLAB SUBSTRATE
- CC** - CONCRETE CAVITY FILLED MASONRY WALL TO ENGINEERS DETAILS OVER CLAD WITH SELECTED STONE FACADE
- SC** - SELECTED ALUMINIUM LOUVER SCREEN
- WBL** - SHIPLAP WEATHERBOARD - NATURAL OIL FINISH
- WBD** - SHIPLAP WEATHERBOARD - DARK OIL FINISH
- CT** - CERAMIC TILES TO WATERPROOFED CONCRETE SLAB



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Allen de Carteret Architecture NSW ABR # 5283 decarta@mac.com 0419 231 530  
 Studio 5 - Level 4 - 68-72 Wentworth Avenue - Surry Hills NSW 2010

Drawn: AdeC  
 Plot Date: 2/7/21  
 Project NO: WBR0002  
 Project Status: DEVELOPMENT APPLICATION  
 Client: Celia Hooper  
 266 WHALE BEACH ROAD  
 WHALE BEACH NSW 2107

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DRAWING: DA Elevations  
 North Elevation  
 PROJECT: 266 WHALE BEACH ROAD

REVISION NO.  
**01**  
 DRAWING NO.  
**DA 303**

**THERMAL COMFORT SPECIFICATION - BASIX**

- DD-W Glazing Doors/Windows**  
 Glazed windows or glazed doors combined with fixed glazing and sliding windows:  
 U-Value: 4.80 (equal to or lower than) (SAC: 0.89 (x100))  
 All other windows (fixed and sliding):  
 U-Value: 3.40 (equal to or lower than) (SAC: 0.83 (x100))  
 Given values are APTC, total window system values (glaze and frame)
- R+C Roofing and Ceiling**  
 Physical ceiling with no insulation, no insulation required  
 Rafterboard ceiling with R4.0 insulation (insulation value only) where roof is above excluding garage  
 Rafterboard ceiling with R2.0 insulation to garage ceiling where habitable rooms above.  
 Internal Ceiling: Medium (0.475-0.500 U)
- EW External Walls**  
 Lightweight cladding on framed walls with R2.0 insulation (insulation value only)  
 Carry wall/brick external concrete block/50mm or gap/100mm rafterboard  
 with AIR-CELL. Perimeter insulation to all other walls. Minimum Total system R value of R0.79  
 No insulation required to external garage walls  
 Internal Ceiling: Medium (0.475-0.500 U)
- IW Internal Walls**  
 Single skin brick with R2.0 insulation only required to walls between garage and habitable areas  
 Carry wall/50mm external concrete block/50mm or gap/100mm rafterboard  
 with AIR-CELL. Perimeter insulation to walls between garage and habitable areas. Minimum Total system R value of R0.79
- F Floors**  
 Concrete slab on ground, no insulation required  
 Suspended concrete with R1.5 insulation (insulation value only) to open suspended areas  
 Concrete between levels, no insulation required where habitable rooms are above and below  
 Floor coverings: Tiles to entry hall and wet areas, timber to gallery/lift and polished concrete elsewhere
- ES External Shading**  
 Covered Porch and Terrace. Eaves as per design plans

**BASIX Water Commitments**

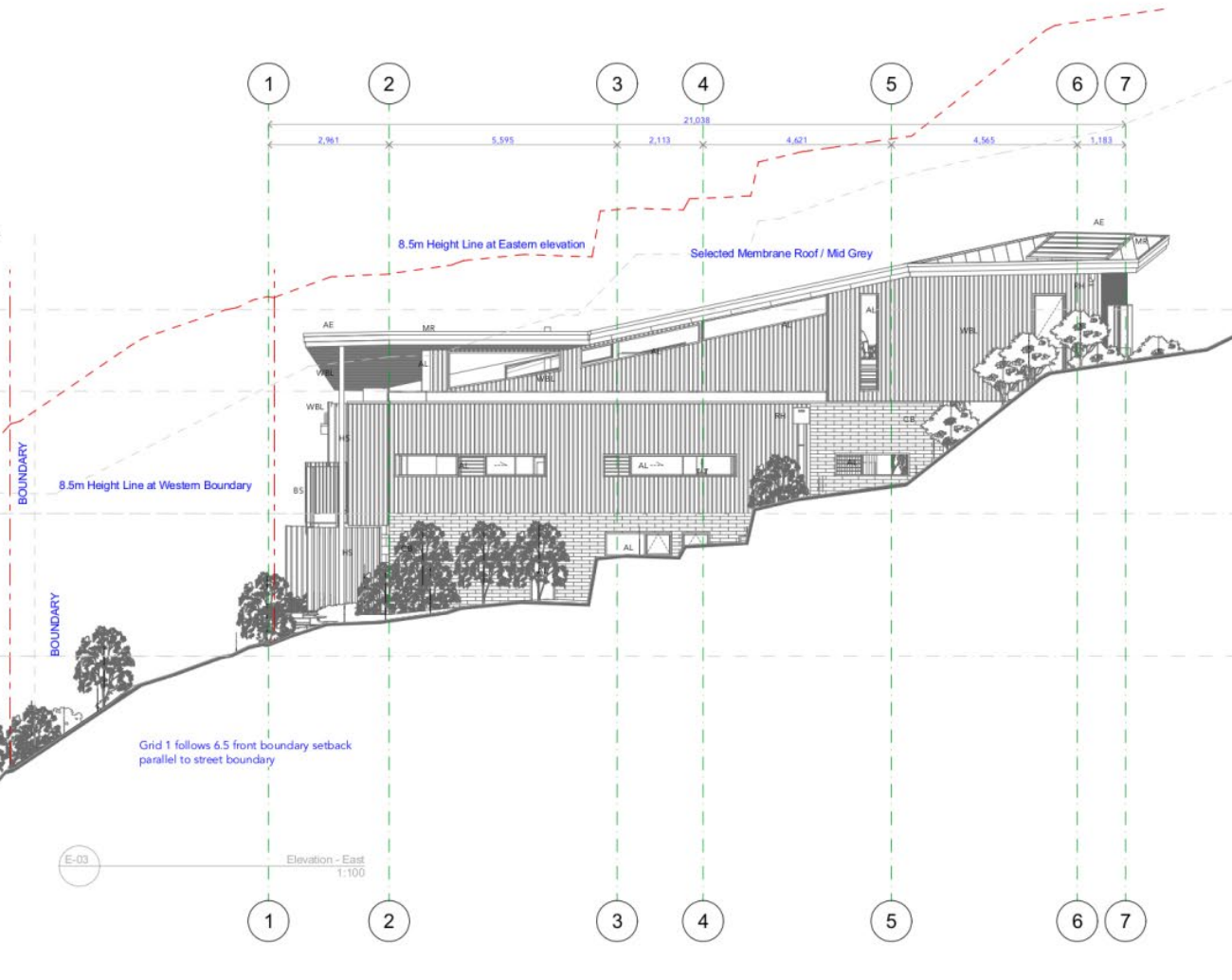
- FX Fixtures**  
 Install showerheads maximum rating of 4 stars (flow 9.0 and < 9.5 litres/min)  
 Install toilet flushing system with a maximum rating of 4 stars in each toilet  
 Install tap with maximum rating of 4 stars in the kitchen  
 Install tap with maximum rating of 4 stars in each bathroom
- AW Alternative Water**  
 Install rainwater tank, minimum 3,000L capacity collected from min. 100m<sup>2</sup> roof area.  
 Tank connected to at least one suitable tap, laundry and toilet.

**BASIX Energy Commitments**

- HWS Hot Water System**  
 Gas storage (no tankless)
- CS Cooling System**  
 Ceiling fan and 3 phase air conditioning to living areas and bedrooms RSR 3.0-3.5
- HS Heating system**  
 3 phase air conditioning to living areas and bedrooms RSR 3.5-4.0  
 Gas fired floor heater to rattle D
- V Ventilation**  
 Kitchen, bathroom and laundry - Individual fan, externally ducted to roof or facade, manual on/off switch
- D Other**  
 Induction cooktop & electric oven  
 Outdoor clothes drying line  
 Wall mounted refrigerator space
- AE Alternative Energy**  
 Minimum 100W photovoltaic system

**MATERIALS & FINISHES LEGEND**

- MR** -1.2mm DOVE GREY SARNAFIL ROOF SYSTEM ON 18mm  
 PLY SUBSTRATE SCREW FIXED TO MANUFACTURES SPECIFICATIONS
- AL** LIGHT COMMERCIAL ALUMINIUM WINDOW FRAME,  
 SQUARE EDGED GLAZING BOARD, NATURAL ANODISED ALUMINIUM GLASS  
 GLAZING TO BASIX SPECIFICATION
- HS** HARDWOOD TIMBER SCREENS- NATURAL OIL FINISH
- RH** RAINWATER HEAD WITH 50mm O/FLOW
- CB** CONCRETE BLOCK MASONRY - HONED FINISH - CAVITY INSULATED  
 WITH CAVITY INSULATION BOARD TO BASIX SPECIFICATION
- BS** BALUSTRADE SS & GLASS- ARCHITECTURAL RIGGING TO MANUFACTURES SPECIFICATIONS
- GD** SELECTED SECTIONAL GARAGE DOOR
- TP** 90mm STUD FRAMED WALL
- TP** SELECTED 20mm TERRACE PAVING STONE ON MORTAR SAND FALLS  
 OVER CONCRETE SLAB SUBSTRATE
- CC** CONCRETE CAVITY FILLED MASONRY WALL TO END WALL DETAILS  
 OVER CLAD WITH SELECTED STONE FACADE
- SC** SELECTED ALUMINIUM LOUVER SCREEN
- WBL** SHIP LAP WEATHERBOARD - NATURAL OIL FINISH
- WBD** SHIP LAP WEATHERBOARD - DARK OIL FINISH
- CT** CERAMIC TILES TO WATERPROOFED CONCRETE SLAB



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 Studio 5 - Level 4 - 68-72 Wentworth Avenue - Surry Hills NSW 2010

Drawn: AdeC  
 Plot Date: 2/7/21  
 Project NO: WBR0002  
 Project Status: DEVELOPMENT APPLICATION  
 Client: Celia Hooper  
 Site: 266 WHALE BEACH ROAD  
 WHALE BEACH NSW 2107

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DRAWING:  
**DA Elevations  
 East Elevation**

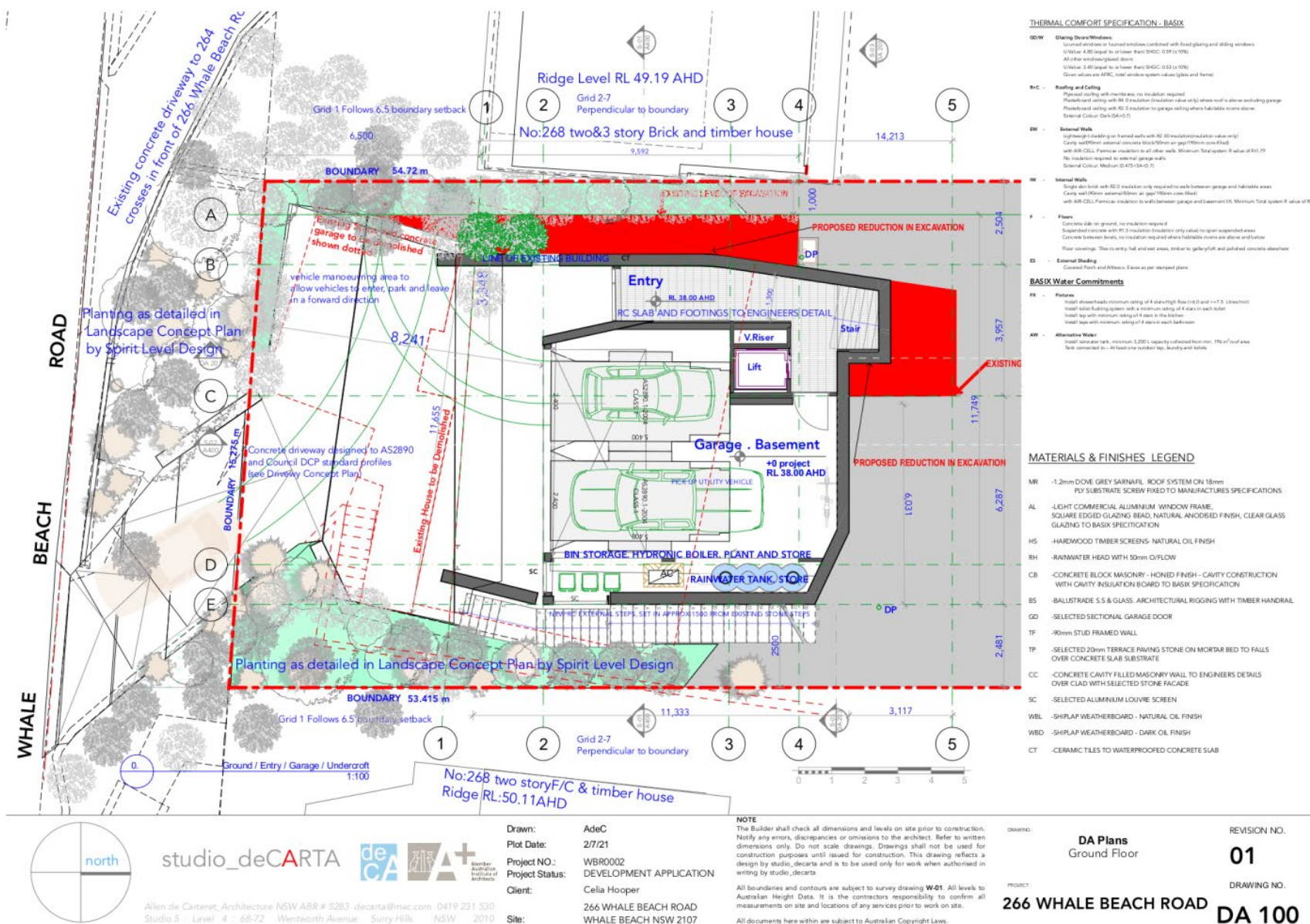
PROJECT:  
**266 WHALE BEACH ROAD**

REVISION NO.  
**01**

DRAWING NO.  
**DA 304**







## THERMAL COMFORT SPECIFICATION - BASIX

**Glazing Doors/Windows:**  
 Laminated windows or louvered windows combined with fixed glazing and sliding windows.  
 U-Value: 4.80 (equal to or lower than) SHGC: 0.59 (±10%)  
 All other windows/glazed doors:  
 U-Value: 3.40 (equal to or lower than) SHGC: 0.53 (±10%)  
 (Given values are AFRC, total window system values (glass and frame))

**R+C - Roofing and Ceiling**  
 Plywood roofing with membrane, no insulation required  
 Plywood ceiling with R4.0 insulation (insulation value only) where roof is above excluding garage  
 Plywood ceiling with R2.5 insulation to garage ceiling where habitable rooms above.

**External Walls**  
 Lightweight cladding on framed walls with R2.50 insulation (insulation value only)  
 Cavity wall (90mm external concrete block/50mm air gap/79 (90mm concrete block) with AIR-CELL. Furrical insulation to all other walls. Minimum Total system R value of R1.79  
 No insulation required to external garage walls  
 External Colour Medium (0.475-Solar 7)

**Internal Walls**  
Single skin brick with R2.0 insulation only required to walls between garage and habitable areas.  
Cavity wall (90mm external/50mm air gap/190mm core-filled) with AIR-CELL Permican insulation to walls between garage and basement lift. Maximum Total system

**Floors**

- Concrete slab on ground, no insulation required
- Suspended concrete with R3.3 insulation (insulation only valued to open suspended areas)
- Concrete between levels, no insulation required where habitable rooms are above and below

85 • **External Shading**  
Coated Porch and Alfresco: Eaves as per stamped plans

### BASIX Water Commitments

**Features**

- Install showerheads with minimum rating of 8 stars/High flow (0.6 GPM) at 80 PSI
- Install toilet flushing system with a minimum rating of 4 stars/cushion flush
- Install tap with minimum rating of 4 stars in the kitchen

**AW - Alternative Water**  
Install rainwater tank, minimum 3,000 L capacity collected from min. 75% of roof area.  
Tank connected to - At least one outdoor tap, laundry and toilets.

### BASIX Energy Commitments

HWS = Hot Water System

## MATERIALS &amp; FINISHES LEGEND

MR -1.2mm DOVE GREY SARNAFIL ROOF SYSTEM ON 18mm  
PLY SUBSTRATE SCREW FIXED TO MANUFACTURES SPECIFICATIONS

AL - LIGHT COMMERCIAL ALUMINUM WINDOW FRAME,  
SQUARE EDGED GLAZING BEAD, NATURAL ANODIZED FINISH, CLEAR GLASS  
GLAZING TO BASIX SPECIFICATION

H5 -HARDWOOD TIMBER SCREENS- NATURAL OIL FINISH

RH - RAINWATER HEAD WITH 50mm O/FLOW

CB - CONCRETE BLOCK MASONRY - HONED FINISH - CAVITY CONSTRUCTION

WITH CAVITY INSULATION BOARD TO BASIX SPECIFICATION

BS BALUSTRADE S.S &amp; GLASS. ARCHITECTURAL RIGGING WITH TIMBER HANDRAILS

GD SELECTED SECTIONAL GARAGE DOOR

TF -90mm STUD FRAMED WALL

TP -SELECTED 20mm TERRACE PAVING STONE ON MORTAR BED TO FALLS

OVER CONCRETE SLAB SUBSTRATE

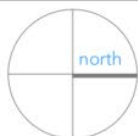
CONCRETE WITH FILLED MASONRY WALL TO END MEETING SEALS  
OVER CLAD WITH SELECTED STONE FACADE

SC -SELECTED ALUMINIUM LOUVRE SCREEN

WBL -SHIPLAP WEATHERBOARD - NATURAL OIL FINISH

WBO -SHIPLAP WEATHERBOARD - DARK OIL FINISH 1.

CT CERAMIC TILES TO WATERPROOF CONCRETE SLAB



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Drawn: AdeC  
Plot Date: 2/7/21  
Project NO.: WBR0002  
Project Status: DEVELOPMENT APPLICATION  
Client: Celia Hooper  
266 WHALE BEACH ROAD  
Site: WHALE BEACH NSW 2107

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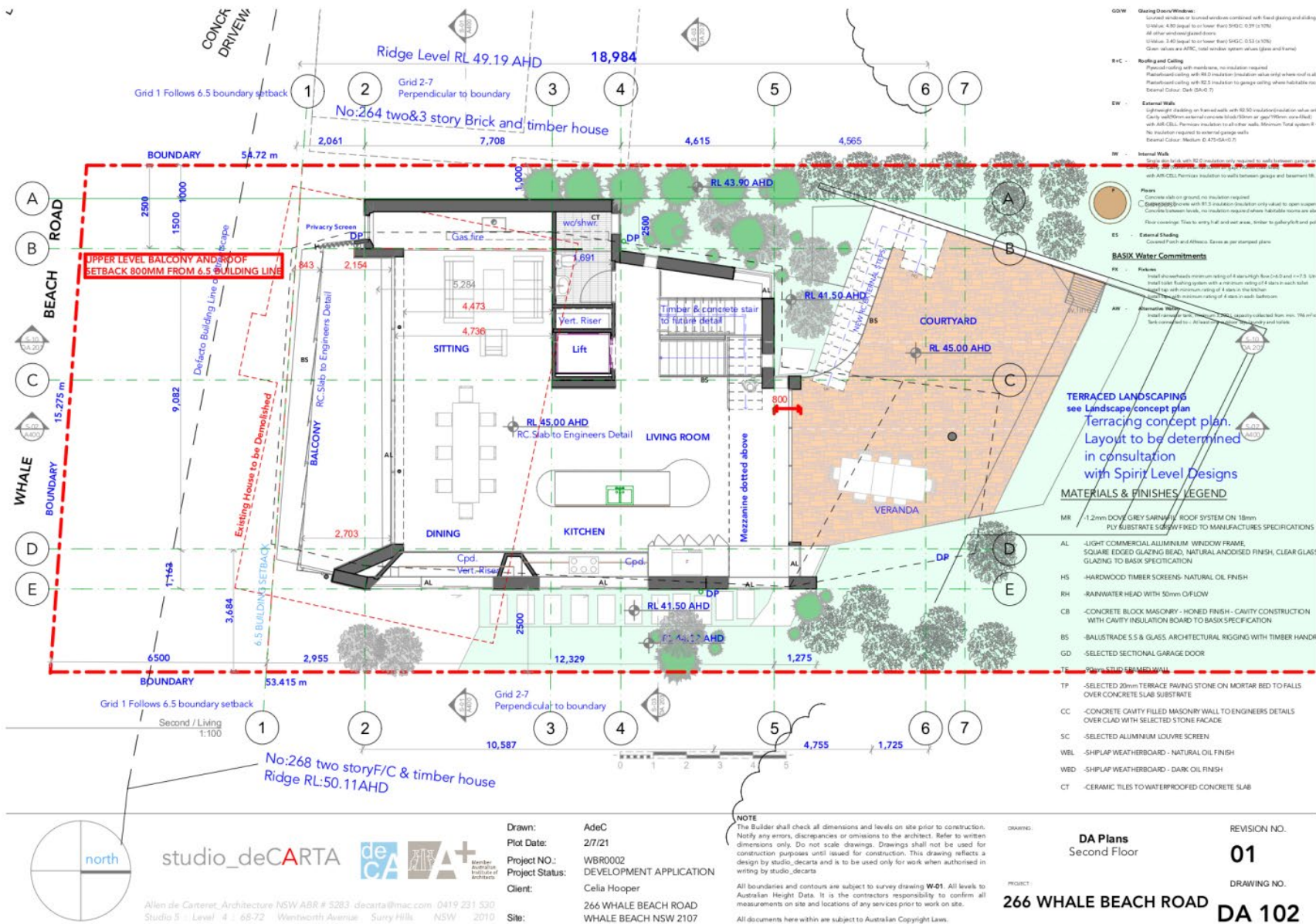
**DA Plans  
First Floor**

PROJECT  
266 WHALE BEACH ROAD

REVISION NO.  
**01**  
DRAWING NO.

DA 101









**THERMAL COMFORT SPECIFICATION - BASIX**

**00-W Glazing Doors/Windows**  
 - Louvered windows or louvered windows combined with fixed glazing and sliding windows  
 - Windows: 4.80 (equal to or lower than) SHGC: 0.59 (or 10%)  
 - All other windows/doors: none  
 - U Value: 3.40 (equal to or lower than) SHGC: 0.53 (or 10%)  
 - (Given values are WRC, total window system values (glaze and frame))

**01-C Roofing and Ceiling**  
 - Physically sealed with membrane, no insulation required  
 - Physically sealed with R-0.5 insulation (insulation value equal to or above roof) where roof is above earth  
 - Physically sealed with R-2.5 insulation to garage ceiling where habitable rooms above  
 - External Colour: Dark (0.475-0.54-0.7)

**02-W External Walls**  
 - Light weight building on framed walls with R-2.50 insulation (insulation value only)  
 - Cavity wall/90mm external concrete block/50mm air gap/190mm concrete/brick  
 - with AIR-CELL Perimeter insulation to all other walls. Minimum Total system R value of 4  
 - No insulation required to external garage walls  
 - External Colour: Medium (0.475-0.54-0.7)

**03-W Internal Walls**  
 - Single skin brick with R-2.5 insulation only required to walls between garage and habitable  
 - Cavity wall/90mm external/50mm air gap/190mm concrete/brick  
 - with AIR-CELL Perimeter insulation to walls between garage and habitable rooms above

**04-F Floors**  
 - Concrete slab on ground, no insulation required  
 - Suspended concrete with R-1.5 insulation (insulation only valid to open suspended water  
 - concrete between levels, no insulation required where habitable rooms are above and in  
 - Floor coverings: Tiles to entry hall and wet areas, timber to other rooms and balconies

**05- External Stairs**  
 - Concrete Tread and Riser. Eaves as per stamped plans

**BASIX Water Commitments**

**06-R Water**  
 - Install showerheads minimum rating of 4 stars high flow (4.0 L/min) and 4 stars low flow (4.0 L/min)  
 - Install water saving system with a minimum rating of 4 stars in each toilet  
 - Install tap with minimum rating of 4 stars in the kitchen  
 - Install tap with minimum rating of 4 stars in each bathroom

**07-W Alternative Water**  
 - Install rainwater tank, minimum 3,000 L capacity collected from roof. The rainwater  
 - tank connected to: -At least one toilet, laundry and bath.

**BASIX Energy Commitments**

**08-HVAC Hot Water System**  
 - Gas storage hot water system

**09-C Cooling System**  
 - Ceiling fan and 3 phase air conditioning to living areas and bedrooms (ESP 3.3-4.0)

**10-HS Heating system**  
 - 3 phase air conditioning to living areas and bedrooms (ESP 3.3-4.0)  
 - Gas hot fluid heater (non-vented)

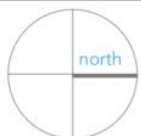
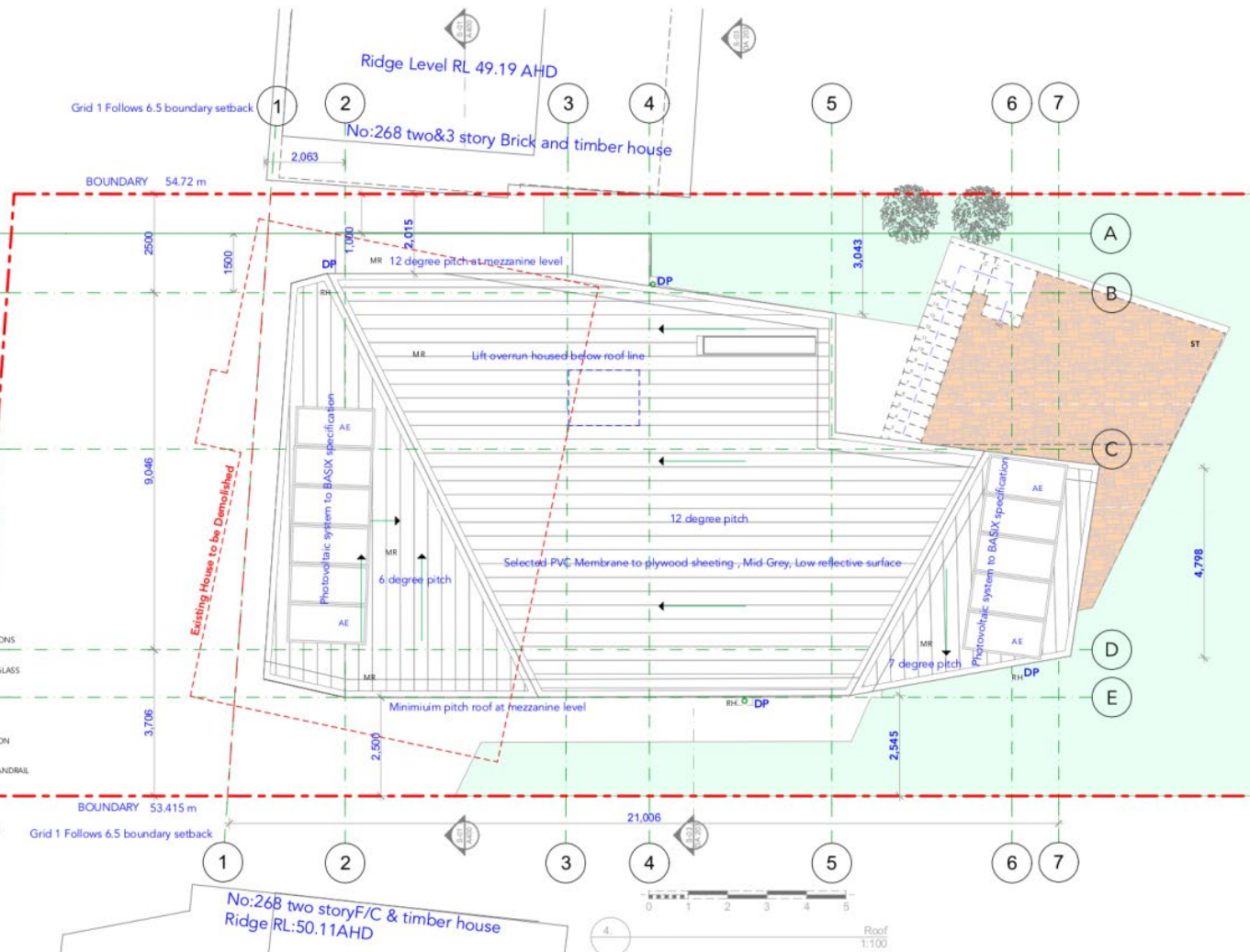
**11-V Ventilation**  
 - Kitchen, bathroom and laundry - Individual fan, externally ducted to roof

**12-O Other**  
 - Induction cooktop & electric oven  
 - Outdoor clothes drying line  
 - Wall vented refrigerator space

**13-AE Alternative Energy**  
 - Minimum 1000Wh production system

**MATERIALS & FINISHES LEGEND**

- MR - 1.2mm DOVE GREY SAMAPIL ROOF SYSTEM ON 18mm PLY SUBSTRATE SCREWFIXED TO MANUFACTURER'S SPECIFICATIONS
- AL - LIGHT COMMERCIAL ALUMINIUM WINDOW FRAMES SQUARE EDGED GLAZING HEAD, NATURAL ANODISED HIGH CLEAR GLASS GLAZING TO BASIX SPECIFICATION
- HS - HARDWOOD TIMBER SCREENS - NATURAL OIL FINISH
- RH - RAINWATER HEAD WITH 50mm O/FLOW
- CB - CONCRETE BLOCK MASONRY - HONED FINISH - CAVITY CONSTRUCTION WITH CAVITY INSULATION BOARD TO BASIX SPECIFICATION
- BS - BALUSTRADE S.S & GLASS ARCHITECTURAL RIGGING WITH TIMBER HANDRAIL
- GD - SELECTED SECTIONAL GARAGE DOOR
- TF - 90mm STUD FRAMED WALL
- TP - SELECTED 20mm TERRACE PAVING STONE ON MORTAR BED TO FALLS OVER CONCRETE SLAB SUBSTRATE
- CC - CONCRETE CAVITY FILLED MASONRY WALL TO ENGINEERS DETAILS OVER CLAD WITH SELECTED STONE FACADE
- SC - SELECTED ALUMINIUM LOUVRE SCREEN
- WBL - SHIP LAP WEATHERBOARD - NATURAL OIL FINISH
- WBD - SHIP LAP WEATHERBOARD - DARK OIL FINISH
- CT - CERAMIC TILES TO WATERPROOFED CONCRETE SLAB



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 Studio 5 - Level 4 - 68-72 Wentworth Avenue - Surry Hills - NSW - 2010

Drawn: AdeC  
 Plot Date: 2/7/21  
 Project NO: WBR0002  
 Project Status: DEVELOPMENT APPLICATION  
 Client: Celia Hooper  
 266 WHALE BEACH ROAD  
 WHALE BEACH NSW 2107

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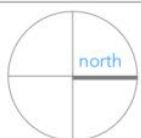
DRAWING: **DA Plans**  
 Roof Plan

PROJECT: **266 WHALE BEACH ROAD**

REVISION NO.  
**01**  
 DRAWING NO.

**DA 104**





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Shadow Diagram Certification by: *Allen de Carteret*  
Allen de Carteret Architecture NSW ABR # 5283 decarta@mac.com 0419 231 530  
Studio 5 : Level 4 : 68-72 Wentworth Avenue : Surry Hills : NSW : 2010

Drawn: AdeC  
Plot Date: 8/4/21  
Project NO: WBR0002  
Project Status: DEVELOPMENT APPLICATION  
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drawings:  
**Certified Shadow Diagrams : Proposed**  
21 June at 0900h

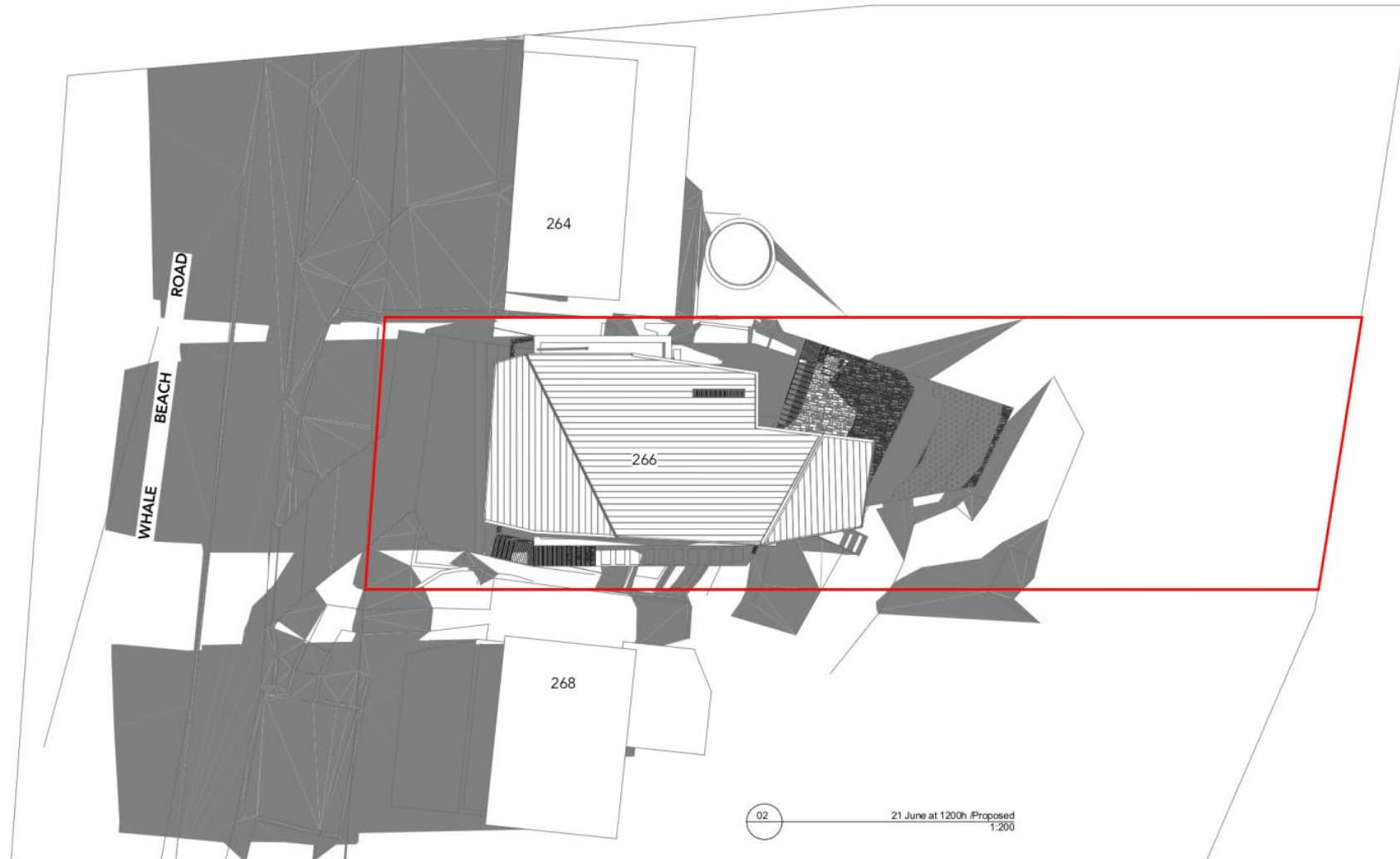
PROJECT:  
**266 WHALE BEACH ROAD**

REVISION NO.

**01**

DRAWING NO.

**DA 501**



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Shadow Diagram Certification by: *deCA*  
Allen de Carteret Architecture NSW ABR # 5283 decarta@mac.com 0419 231 530  
Studio 5 : Level 4 : 68-72 Wentworth Avenue Surry Hills NSW 2010

Drawn: AdeC  
Plot Date: 8/4/21  
Project NO: WBR0002  
Project Status: DEVELOPMENT APPLICATION  
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drawings:  
**Certified Shadow Diagrams : Proposed**  
21 June at 1200h

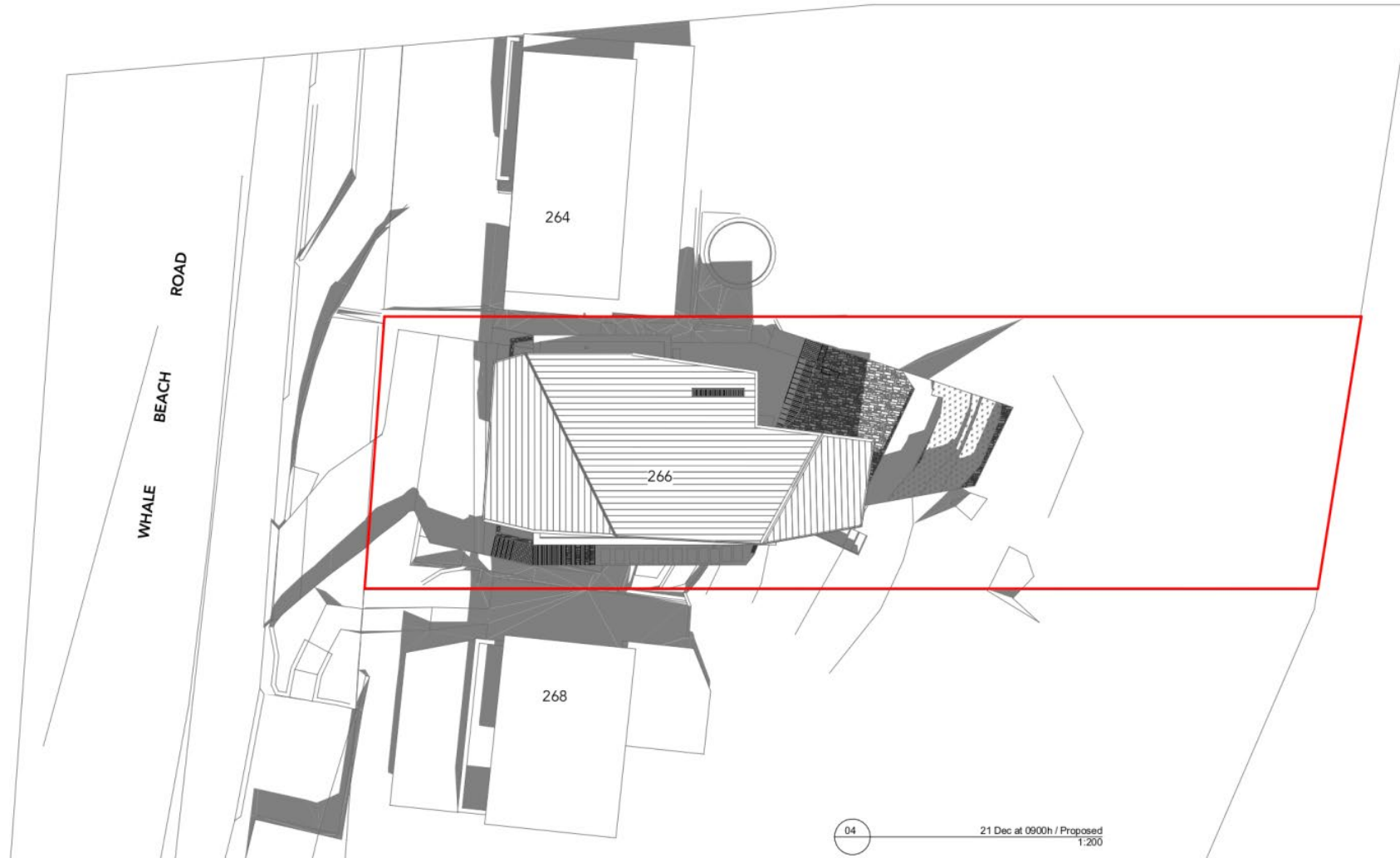
PROJECT:  
**266 WHALE BEACH ROAD**

REVISION NO.

**01**

DRAWING NO.

**DA 502**



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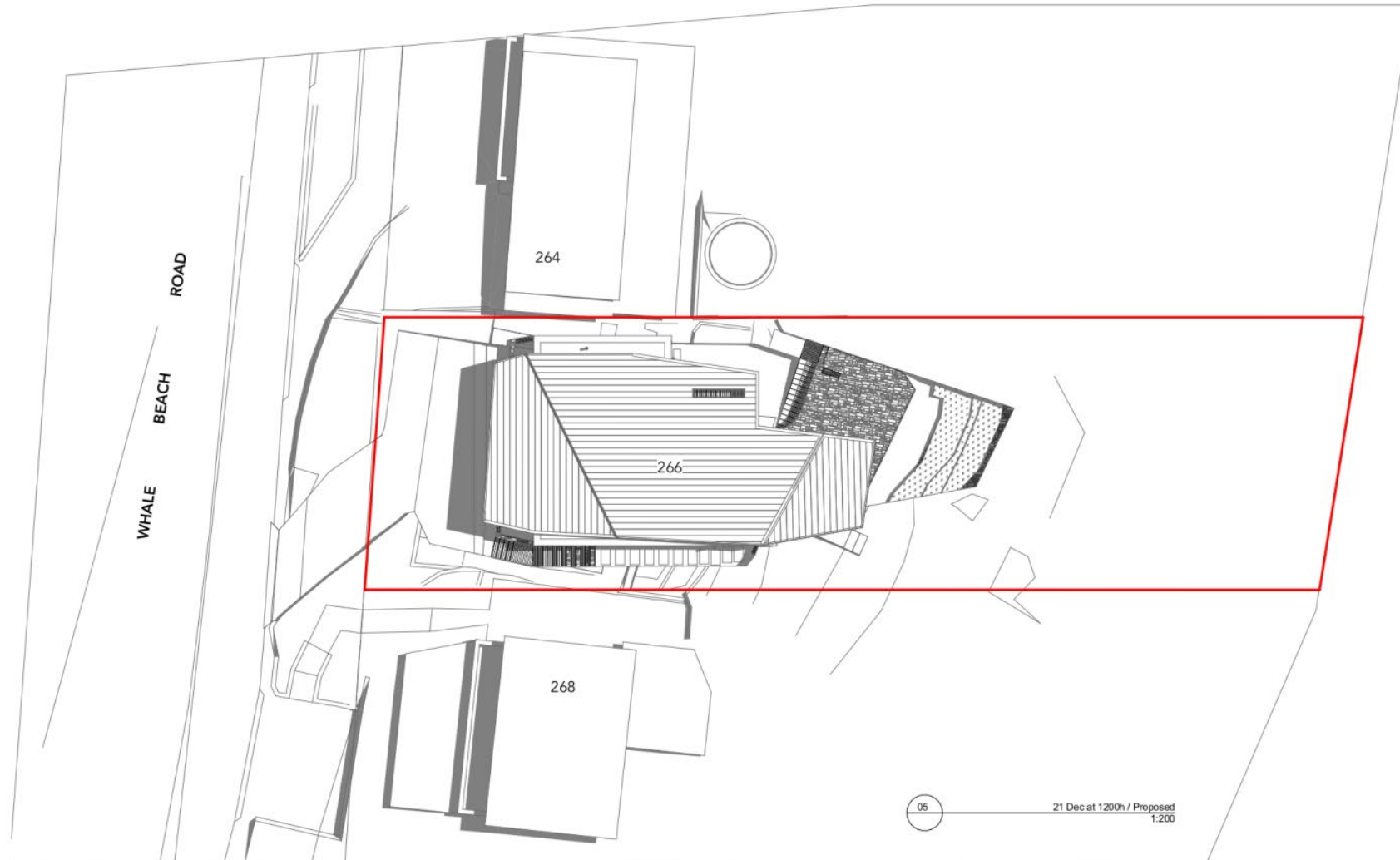
Shadow Diagram Certification by: *Allen de Carteret*  
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**Certified Shadow Diagrams : Proposed**  
21 Dec at 0900h  
**266 WHALE BEACH ROAD**

REVISION NO.  
**01**  
DRAWING NO.  
**DA 504**



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drawings:  
**Certified Shadow Diagrams : Proposed**  
21 Dec at 1200h

PROJECT:  
**266 WHALE BEACH ROAD**

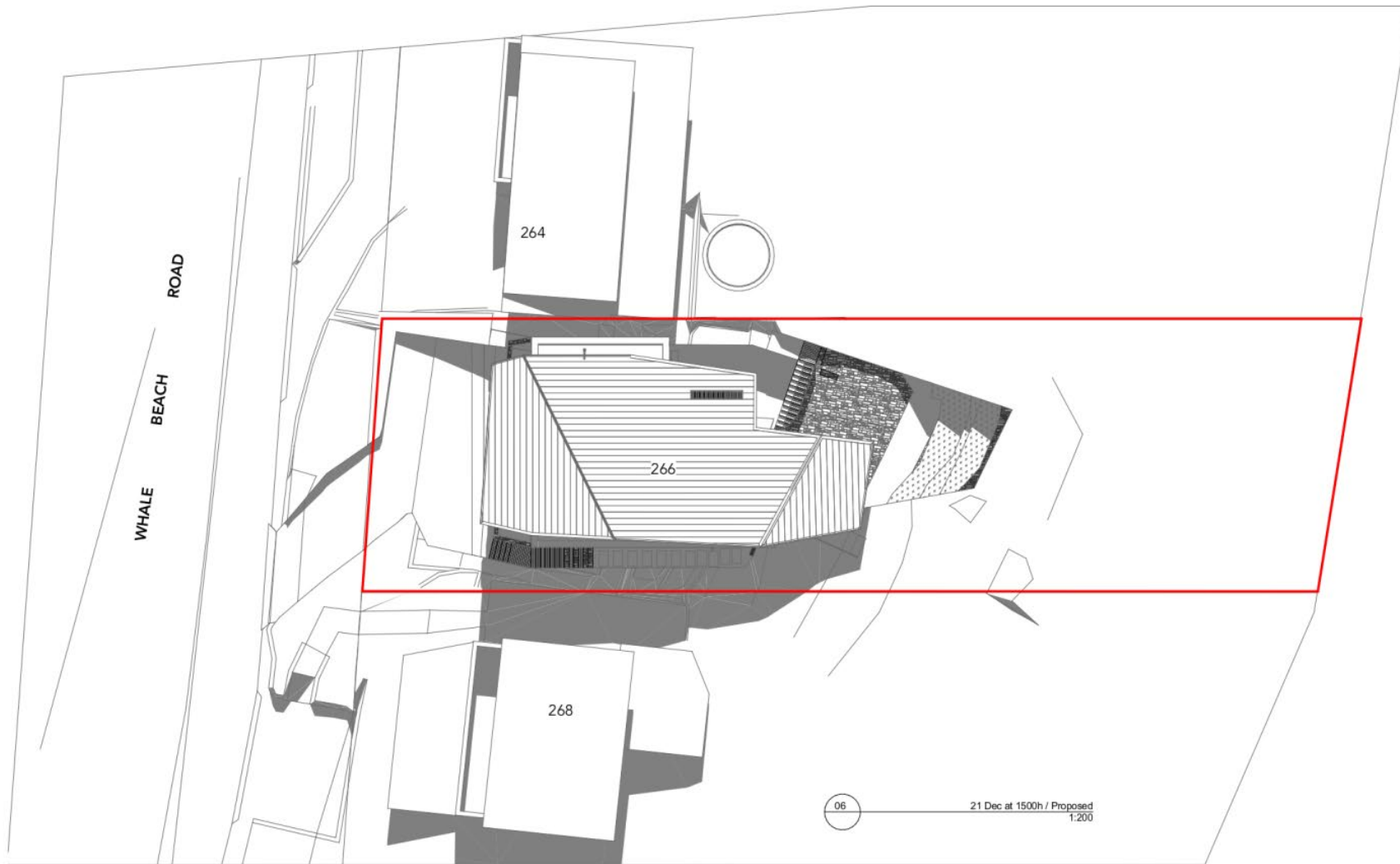
REVISION NO.

**01**

DRAWING NO.

**DA 505**





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**Certified Shadow Diagrams : Proposed**  
21 Dec at 1500h  
**PROJECT:**  
**266 WHALE BEACH ROAD**

REVISION NO.  
**01**  
DRAWING NO.  
**DA 506**