

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 25 AUGUST 2021



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 25 August 2021

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 11 August 2021	
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3.1	DA2021/0507 - 147 Campbell Parade, Manly Vale - Demolition works and construction of a dwelling house including a secondary dwelling.	5
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 11 AUGUST 2021

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 11 August 2021 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2021/0507 - 147 CAMPBELL PARADE, MANLY VALE - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SECONDARY DWELLING.
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2021/579227
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Report - Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants 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.
- B. THAT Council, as the consent authority, **approves** Development Consent to DA2021/0507 for Demolition works and construction of a dwelling house including a secondary dwelling on land at Lot 25 DP 27009, 147 Campbell Parade, Manly Vale, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0507
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 25 DP 27009, 147 Campbell Parade MANLY VALE NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house including a secondary dwelling
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gerard Patrick Homan Rachel Clare Homan
Applicant:	Metro Planning Services
Application Lodged:	20/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	27/05/2021 to 10/06/2021
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.3 Height of buildings: 3.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 987,375.00

PROPOSED DEVELOPMENT IN DETAIL

The subject development application seeks consent for the demolition of structures and the construction of a two storey dwelling house, a single storey attached secondary dwelling to the rear of the principal dwelling and associated landscaping and civil works.

Seven (7) trees are also proposed to be removed.

Parts of the developments eastern side would be of slab-on-ground construction, while western areas (including the ground floor decks) would be elevated and constructed on top of piers. The dwelling will

be partially elevated on piers, with the exterior of the dwelling to consist of clad and rendered external walls with a metal roof. Other details of the proposal are as follows:

Ground Floor

- Entrance to the dwelling via a centrally located entryway on the primary elevation. Two (2) car parking spaces would be contained within an attached garage on the eastern side of the dwelling. New driveway and hardstand also form part of this application.
- The ground floor would mostly consist of an open-plan kitchen, meals and family area, which would be oriented towards the northwest side of this level.
- A study, powder room, laundry and stairs would be located to the south/southeast of this level.
- A large deck is proposed on the western side of the dwelling, and would be accessed via sliding doors on the western side of the living area and study.

First Floor

- The first floor is proposed to include four (4) bedrooms. The master bedroom will also contain an ensuite and walk-in-robe. A bathroom is proposed on the eastern side of this level.
- A balcony is proposed on the primary elevation forward of the bathroom. A small rooftop garden is proposed on the eastern side of the balcony.
- A sitting room is located towards the southwest side of this level.
- A balcony is proposed on the western side of this level, and would be accessed via a sliding door from the aforementioned sitting room.

Secondary Dwelling

- The layout of the secondary dwelling would include a single bedroom on the eastern side, a small bathroom/laundry on the internal side and an open plan living area.
- A deck is to be located on the western side of the secondary dwelling and would be directly accessible from the open plan living area.
- Access to the secondary dwelling would be via a pathway around the eastern side and rear of the development and a doorway to the kitchen and via the western side of the dwelling and a gate from the main ground-floor deck of that dwelling.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - E7 Development on land adjoining public open space

SITE DESCRIPTION

Property Description:	Lot 25 DP 27009 , 147 Campbell Parade MANLY VALE NSW 2093
Detailed Site Description:	<p>The subject site consists of a single allotment located that is located on the southwest side of the Campbell Parade turning head. The eastern and southern boundaries adjoin residential allotments, while the western boundary adjoins a public reserve (Mermaid Pool).</p> <p>The site is an irregularly-shaped allotment with a frontage of 17.678 metres that adjoins the Campbell Parade turning head; the maximum depth of the site has a maximum depth of 36.811 metres. The site has a surveyed area of 702.6m², and contains a notable east-to-west (i.e. side-to-side) slope with a maximum fall of approximately four metres.</p> <p>The site is located within the R2 Low Density Residential zone under WLEP 2011. The site is mapped as being bushfire and flood prone and being subject to a landslip hazard (Areas A and B, denoting slopes of between 0 and 25%). The site is also mapped as containing native vegetation and being adjacent to a public reserve.</p> <p>The site does not contain a heritage item and is not within a heritage conservation area; the nearest mapped local heritage item is the Manly Hydraulics Laboratory (Item No. I144), which is approximately 90 metres southwest of the subject site.</p> <p>Development on the site includes a detached single storey dwelling and adjoining deck, which are located towards the eastern side of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Development on adjoining and surrounding residential-</p>

zoned areas consists predominately of low-density residential development (i.e. dwellings houses and associated structures such as swimming pools). The adjoining public reserve to the west of the site is not developed.

Map:



SITE HISTORY

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

- Development Application DA2020/0897 for Demolition works and construction of a dwelling house including a secondary dwelling was withdrawn by the applicant on the 15 March 2021 at the request of Council. The development application was withdrawn as a result of unresolved issues that arose during the assessment of the application. Since withdrawal the applicant made amendments with the aim to address Council's previous concerns. The amended development is subject to this separate application currently under assessment.

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	Draft State Environmental Planning Policy (Remediation of Land)

Section 4.15 Matters for Consideration'	Comments
of any draft environmental planning instrument	seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely	(i) Environmental Impact

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Consultancy Australia, dated 14.04.2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/05/2021 to 10/06/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Victoria Jane Heaton	27 Headland Road NORTH CURL CURL NSW 2099
Mr Malcolm John Fisher	37 King Street MANLY VALE NSW 2093
Mr Victor Petersen	15 Bluegum Crescent FRENCHS FOREST NSW 2086

Name:	Address:
Mr Michael Houston	12 Palm Parade NORTH NARRABEEN NSW 2101
Mrs Ann Frances Collins	41 Gordon Street MANLY VALE NSW 2093
Ann Elizabeth Sharp	77 Brighton Street CURL CURL NSW 2096

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

- Impacts of development on Mermaid pools and surrounds

The matters raised within the submissions are addressed as follows:

- **Impacts of development on Mermaid pools and surrounds**

Concerns were raised in relation to the impact of the development on the environment surrounding the adjacent Mermaid Pools, and downstream, which is situated downhill from the subject site. Various concerns were raised including erosion, siltation and pollution, impacts on flora and fauna. Concern was also raised with respect to the size of the proposed development, and the visual impacts that this would have on the public area surrounding the Mermaid Pools. Further concerns were raised with respect to visual and acoustic privacy to the public area, and light pollution disturbing wildlife.

Comment:

The proposal has been referred to various Council specialists and departments, including the Bushland and Biodiversity team, Riparian Lands and Creeks team, Landscape Officer, and the Parks, Reserves, Beaches, Foreshores department. The Aboriginal Heritage Office has also inspected the site and surrounds, including the Aboriginal heritage item (hand paintings) located close to the site and Mermaid Pool. All referral bodies are satisfied, subject to appropriate conditions of consent, that the proposal can be carried out without unreasonable environmental impacts being caused to the surrounding area, including in relation to flora and fauna, Aboriginal Heritage, and protection of the public bushland and waterway.

Council's Landscape Officer has also insisted on a landscape plan that provides appropriate planting along the western boundary to provide screening between the development and the public area surrounding the Mermaid Pools. Planting along this boundary includes species that will achieve a mature height of up to 8m (Blueberry Ash), and 3m (Grevillea Moonlight). This planting will provide a significant visual buffer to the development, and help to mitigate against bulk and scale concerns raised in the submissions. Conditions have been recommended to ensure the landscaping is carried out and retained in accordance with the consent.

The proposal is non-compliant with a number of relevant built form controls, with these variations due primarily to the slope of the land (in regard to height) and unusual shape of the site, and the provision of the large side setback to the boundary adjoining the public land to the west. Variations to the front and rear setback controls are supported given the provision of the large western side setback to this area. Compliance with the 40% minimum landscaped open space control is an indicator that the overall size of the proposal is generally within expectations for development of the site, and the proposal is not considered an overdevelopment. As discussed above, a significant visual buffer to the Mermaid Pools will be created by the large side setback and planting along the western boundary. The development is generally well articulated and provides varying setbacks at different levels to the western boundary, which will further assist in breaking up the visual bulk of the built form.

Visual and acoustic privacy for a public area is not considered to be a reasonable objection. Given the nature of the site and adjacent public area, it is natural to expect that any redevelopment of the site will orientate itself towards the Mermaid Pool, and include decks and windows overlooking this area. The application is for residential use, and there is no reason to expect any greater noise than would reasonably be expected from normal residential use of a dwelling and secondary dwelling. Council's Bushland and Biodiversity team have raised no concerns in relation to light pollution. The application does not propose any outdoor lighting. The submissions are not supported in this regard.

Given these considerations, the proposal is considered acceptable in relation to the issues raised, subject to the conditions of consent in the recommendation section of this report.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>The proposal is for the demolition of an existing dwelling and construction of a new dwelling and a secondary dwelling.</p> <p>The application is assessed by Landscape Referral against Warringah Development Control Plan 2011, including but not limited to the following clauses:</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation • E6 Retaining unique environmental features • E7 Development on land adjoining public open space <p>The landscape character of the existing site is predominantly of a suburban garden with pavements, retaining walling, lawn and scattered trees and palms. An arborist report accompanies the development application proposing to retain trees not impacted by the development. Existing trees / palms recommended for removal are all Exempt Species under Warringah DCP. Amongst the trees to be retained along the boundary between the development site and David Thomas Reserve are Exempt Species identified as tree 16 (Jacaranda) and tree 17 (Fiddlewood), as well as native trees 18 (Red Cedar) and tree 20 (Paperbark). Conditions of consent can be imposed to require Exempt Species to be protected and retained.</p> <p>A Landscape Plan is provided with the proposal indicating retention of</p>

Internal Referral Body	Comments
	existing trees in accordance with the Arborist report and additional low planting to enhance the landscape character. The Landscape Plan includes to some extent planting to provide physical and visual separation between the private land and the adjoining public land, and subject to conditions of consent outlining planting requirements, the proposal will be able to provide a landscape buffer between the David Thomas Reserve and the development site to satisfy Warringah DCP clause E7, where landscaping is to screen development.
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) Warringah Local Environmental Plan (WLEP) Warringah Development Control Plan (WDCP)</p> <ul style="list-style-type: none"> • Clause E2 Prescribed Vegetation • Clause E5 Native Vegetation • Clause E6 Retaining unique environmental features <p>The application seeks to remove seven (7) trees including six exempt trees and one exotic species. The application will also required the site to be managed in accordance with the standards of an Inner Protection Area (IPA). The submitted Landscape Plan (Banksia Design Group 2021) is noted, including the provision of locally-native trees and shrubs. The provision of these plantings and the retention of all native vegetation ensures consistency with the relevant provisions of the WDCP.</p> <p>Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>
NECC (Development Engineering)	Development Engineering has no objection subject to the following conditions of consent.
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation for the protection of waterways. It proposes to increase impervious surfaces by more than 50m² and therefore requires the installation of a water quality filtration device. Standard sediment erosion controls will also be required.</p> <p>With the application of these conditions it is considered unlikely that the development will have an adverse impact on manly Creek. It is therefore recommended for approval subject to conditions.</p>
Parks, reserves, beaches, foreshore	<p>The proposal is for the demolition of an existing dwelling and construction of a new dwelling and a secondary dwelling.</p> <p>Council's Parks Referral staff have assessed the proposal against the following Warringah DCP Controls:</p> <ul style="list-style-type: none"> • C5 Erosion and Sedimentation • C8 Demolition and Construction

Internal Referral Body	Comments	
	<p>• E7 Development on Land Adjoining Public Open Space</p> <p>The property adjoins David Thomas Reserve located downslope of the site. All works adjoining reserves on the downslope must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from entering the Reserve.</p> <p>No permanent structures nor built elements are permitted beyond the boundaries and the nominated fencing shown on the Landscape Plan shall be located on boundary. The nominated gate at the common boundary is not supported by Parks Referral and private access onto public land is not permitted.</p>	
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS	
	Discussion of reason for referral	
	<p>The proposal has been referred to Heritage as the subject site is within proximity to a heritage item</p> <p>I144 - Manly Hydraulics Laboratory - King Street, Manly Vale</p>	
	Details of heritage items affected	
	<p>Details of the item as contained within the Warringah inventory is as follows:</p> <p><u>Statement of significance:</u> The Manly Hydraulics Laboratory (MHL) site as a whole, has State heritage significance for its role in the development of water engineering and in particular physical hydraulic modelling after WWII. MHL has always been at the forefront of environmental and hydraulic engineering practice and has made a significant contribution to technical innovation, economic growth and environmental management in NSW since 1944. Many significant water infrastructure projects were tested at the MHL, some of which have State heritage significance in their own right as works of outstanding engineering.</p> <p><u>Physical description:</u> The Manly Hydraulics Lab sits immediately adjacent to the downstream face of Manly Dam. The structures and works on the site relate to both the Manly Dam water supply and the operation of the hydraulics lab itself. Originally the MHL encompassed the current MHL site and the adjoining University of NSW site. This listing sheet only covers the part of the site currently owned by the NSW Department of Commerce as shown in the attached site plan.</p>	
	Other relevant heritage listings	
	<table> <tr> <td>Sydney Regional</td><td>No</td></tr> </table>	Sydney Regional
Sydney Regional	No	

Internal Referral Body	Comments		
	Environmental Plan (Sydney Harbour Catchment) 2005		
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	Yes	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	Yes	The MHL is on the s170 Register for state owned heritage items
	Consideration of Application		
	<p>The proposal seeks consent for a new dwelling and secondary dwelling at the subject site. Mermaid Pools which is located immediately to the west of the property is not a listed heritage item under the <i>NSW Heritage Act 1977</i> or the Warringah Local Environmental Plan 2011. The nearest heritage item is the Manly Hydraulics Laboratory which is located south west of the subject site and further up Curl Curl Creek. It is separated from the subject site by bushland and the Wandella Road reservation. Given the physical separation and bushland in between, the proposal is considered to not impact upon the heritage item or its significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of WLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>		
	Further Comments		
	COMPLETED BY: Brendan Gavin, Principal Planner		
	DATE: 24 May 2021		

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

External Referral Body	Comments
	<p><i>There are known Aboriginal sites in the area and one site (45-6-3147) is recorded adjacent to the current lot. The recorded Aboriginal site is not to be subject to this DA.</i></p> <p><i>An inspection of the property by the Aboriginal Heritage Office and Council on 7 June 2021 confirmed the location of the recorded site. No other Aboriginal sites or areas of potential were identified in the proposed development area.</i></p> <p><i>All Aboriginal sites are protected under NSW legislation whereby it is illegal to harm, damage or destroy them without prior written approval from the NSW Office of Environment and Heritage. If any works are proposed that would impact the rock overhang or Aboriginal rock art (including direct impacts such as excavating, cutting, drilling, scraping, concreting into or permanently marking the rock or indirect impacts such as landscaping that would result in increased water run off or vegetation cover or the placement of infrastructure that could result in wear, such as ropes and cables) the AHO recommends the proponent contact Heritage NSW for advice as to whether an Aboriginal Heritage Impact Permit (AHIP) under the National Parks and Wildlife Act is required.</i></p> <p><i>Adequate mitigation and management procedures would need to be put in place to ensure the Aboriginal site is protected.</i></p> <p><i>If the recorded site is not impacted then the Aboriginal Heritage Office would not foresee any further Aboriginal heritage issues on the current proposal.</i></p> <p><i>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, Heritage NSW and the Metropolitan Local Aboriginal Land Council should be contacted.</i></p> <p><i>Comment: The works are located well away from the Aboriginal Site (approximately 40m) that is located near the Mermaid Pool, and are unlikely to have any impacts. Conditions are recommended including silt and sediment controls during construction.</i></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 19 - Bushland in Urban Areas**

For land adjoining land zoned or reserved for public open space, Council shall not grant development consent unless it has taken into account:

- (c) the need to retain any bushland on the land,*
- (d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
- (e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

Comment:

The provisions of the SEPP require that a person shall not disturb bushland zoned or reserved for public open space purposes without the consent authority considering the aims and objectives of the SEPP.

In this regard, consideration is given as follows:

(1) The general aim of this Policy is to protect and preserve bushland within the urban areas referred to in Schedule 1 because of:

- (a) its value to the community as part of the natural heritage,
- (b) its aesthetic value, and
- (c) its value as a recreational, educational and scientific resource.

(2) The specific aims of this policy are:

- (a) to protect the remnants of plant communities which were once characteristic of land now within an urban area,
- (b) to retain bushland in parcels of a size and configuration which will enable the existing plant and animal communities to survive in the long term,
- (c) to protect rare and endangered flora and fauna species,
- (d) to protect habitats for native flora and fauna,
- (e) to protect wildlife corridors and vegetation links with other nearby bushland,
- (f) to protect bushland as a natural stabiliser of the soil surface,
- (g) to protect bushland for its scenic values, and to retain the unique visual identity of the landscape,
- (h) to protect significant geological features,
- (i) to protect existing landforms, such as natural drainage lines, watercourses and foreshores,
- (j) to protect archaeological relics,
- (k) to protect the recreational potential of bushland,
- (l) to protect the educational potential of bushland,
- (m) to maintain bushland in locations which are readily accessible to the community, and
- (n) to promote the management of bushland in a manner which protects and enhances the quality of the bushland and facilitates public enjoyment of the bushland compatible with its conservation."

Comment:

The application has been referred to Council's Bushland and Biodiversity department, and Riparian Lands and Creeks department. It was also referred to the Aboriginal Heritage Office, Council's Parks, Reserves, Beaches and Foreshores department, and Landscape Officer. None of these referral bodies

have identified any concerns in relation the development nor have they assessed that it will have any unreasonable impacts on the adjacent public land, or any of the matters for consideration above.

The new dwelling proposed has been set well back from the boundary to the public land to the west, and a landscape plan provided which will ensure significant visual screening between the private and public property. The use of the land for a dwelling will not have any significant impacts in terms of limiting access or recreational or educational potential of the area.

The proposal is considered to be consistent with all matters for consideration listed above.

Based on the above, it is considered that the development would not result in consistency with the aims of the plan.

SEPP 55 - Remediation of Land

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

SEPP (Affordable Rental Housing) 2009

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

Division 2: Secondary dwellings

Clause 19: Definition

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

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

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

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

Comment:

The proposed use is defined under WLEP 2011 as a 'dwelling house' and a 'secondary dwelling'.

Clause 20: Land to which this Division applies:

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

Clause 21: Development to which this Division applies

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

Clause 22: Development may be carried out with consent

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

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The development, if approved, would result in a single primary dwelling and a single secondary dwelling on site.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	Proposed floor area of the secondary dwelling is 59.6m ² .
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if:	Site area: 702.6m ² Additional car parking is not proposed on site. Two (2) car parking spaces are provided for the primary dwelling.

(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres.	
(b) parking if no additional parking is to be provided on the site.	

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

Clause 24: No subdivision

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

Conclusion

The proposal will satisfy the applicable provisions of Division 2 of the ARH SEPP.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1116865M_03 dated 29 April 2021).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	61

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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.8m	3.5%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.8m
Percentage variation to requirement:	3.5%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) *the consent authority is satisfied that:*

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The non-compliance will not have an unreasonable impact on the street or surrounding properties,
- The site is subject to flood controls requiring a minimum floor level,
- The flooding control combined with the topographic constraints are reasons for the non-

compliance,

- The proposal is consistent with the objectives of clause 4.3,
- The bulk, scale and massing is compatible with surrounding dwellings in the immediate area without adversely impacting the scenic qualities of the adjoining Mermaid Pools reserve,
- The proposal is consistent with the zone objectives,
- It is not unusual for Council to approve non-compliances on sloping sites in the Northern Beaches, and this site is such a site.

The arguments above are generally concurred with. The proposed non-compliance is minor in the context of the overall building, being confined to the western edge of the new roof in the north western corner of the building, and being only 300mm over the height limit in this area where the land falls away both to the west and north. The site is subject to constraints including the topography and the flooding controls. It is also agreed that the proposal is not inconsistent in terms of bulk and scale with other nearby development.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

The proposal is generally consistent with other two storey development in the area. The western elevation will prevent as almost three storeys in parts, due to the slope of the land. However, it is generally stepped back, and articulated with the use of decks. The proposal is largely compliant with the height control, apart from a small part of the north western roof where the land falls away. The proposal is considered to be consistent with this objective.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The proposal does not result in any unreasonable disruption of views, loss of privacy or of solar access. The submissions received have focussed heavily on the visual impacts of the development on the adjacent public reserve to the west. However, as discussed above, the proposed non-compliance is generally minor in nature, being 300mm over the height limit where the land falls away, and being confined to a small part of the north western corner of the development. Additionally, the proposal generally maintains a side setback far larger than the minimum requirement of 900mm to the western side boundary, enabling significant planting to screen the built form and mitigate visual impacts.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

As above, the submissions received focused on the perceived adverse impacts to the public reserve area to the west. However, the proposed non-compliance is minor, and occurs due to the topography of the land as it falls away. The proposal also includes reduced front and rear setbacks, but this is compensated for by a significantly larger than required western side setback, which enables significant planting to screen the built form on that side. The proposal also complies with the minimum landscaped open space requirement. Given these considerations it is considered that the development achieves a good balance between developing the site to its potential, while minimising adverse impacts on the scenic quality of the public reserve. A development could be proposed in full compliance with the controls that would have a significantly larger impact on the reserve, but be sited just 900mm from the common boundary. The proposal achieves a balance, and is considered to achieve this objective.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

As discussed above, the proposal includes significant vegetation in the large western side setback to mitigate against visual impacts of the development when viewed from the reserve. Council's Landscape Officer has supported the application in this regard (subject to conditions of consent). The minor non-compliance to the overall height limit does not occur at the ridge of the dwelling, but at the western gutter line as the land falls away. The proposal overall is considered to fall within general expectations for development of the site, and the provision of the large western side setback area will allow sufficient mitigation of visual impacts.

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 provides for a primary dwelling and a secondary dwelling, in accordance with density permitted for the zone.

It is considered that the development satisfies this objective.

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

Comment:

N/A

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposal provides a minimum 40% of the site as landscaped open space, in accordance with the minimum requirements. A large western side setback has also been provided, to allow for a transition from the private property to the adjacent public reserve, and allow for significant vegetation to be maintained in this area. The proposal has been assessed by Council's Natural Environment department, and Landscape Officer, who have supported the proposal subject to conditions (see Referrals section of this report). The proposal is considered to maintain a landscaped setting in this regard.

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 issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8m	11.1%	No
B3 Side Boundary Envelope	E 4m	Complies	N/A	Yes
	W 4m	Complies	N/A	Yes
B5 Side Boundary Setbacks	0.9m	E: 0.9m	N/A	Yes
	0.9m	W: 2.1m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	2.9m	55.4%	No
B9 Rear Boundary Setbacks	6m	2.4m	60%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	40% (280m ²)	N/A	Yes

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

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposal does not comply with the 7.2m wall height requirement on the western side, being up to 8m high at the north western corner of the upper level. This is primarily due to the slope of the land, which fall away steeply from east to west. This is also the location where the gutter level will breach the overall height limit.

Merit consideration:

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

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

Comment:

While the breach to the wall height control occurs in this corner of the upper level, the majority of the building complies with the control, and with the overall 8.5m height control. The non-compliance is on the western side of the building, and is worst in the north western corner, where the land falls from both east to west and south to north. It will not cause the overall building to have unreasonable visual impacts on the adjoining properties, or the public land to the west.

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

Comment:

The development will remain generally beneath the existing tree canopy level, and the landscape plan includes planting to screen and mitigate the visual impacts of the built form.

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

Comment:

No views will be unreasonably impacted upon.

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

Comment:

The proposal is not considered to have any unreasonable impacts on surrounding properties, as assessed throughout this report.

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

Comment:

As mentioned above, the non-compliance occurs where the land falls. The upper level is stepped back from the lower level. Given the general level of overall compliance with the applicable height limits, with the exceptions occurring in the corner of the building where the land falls away in both directions, the building is considered to adequately respond to the topography.

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

Comment:

The proposed roof is of a standard design.

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

B7 Front Boundary Setbacks

Description of non-compliance

The proposal will be setback between 8.6m and 2.9m from the front boundary.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The site is at the end of a cul-de-sac, and the front boundary (and rear boundary) is at an angle inwards from the eastern side boundary. The larger setback is adjacent and generally consistent with the neighbouring building to the east, and the reduced setback on the western side of the

building is as a result of the angled front boundary. This non-compliance occurs where there is a very large road reserve to the end of Campbell Parade, and will not have any unreasonable impacts on the sense of openness in the area.

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

Comment:

The setback of the building is generally consistent with the neighbouring building to the east, and the non-compliance is due to the unusual shape of the lot. Given the large road reserve area to the end of the cul-de-sac, the visual continuity and pattern of buildings and landscape elements will generally be maintained in the street.

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

Comment:

As discussed above, the non-compliant part of the building is set well back from the street, due to the site being located at the end of the cul-de-sac, and the angled front boundary. It will have no unreasonable visual impacts on the streetscape or public area to the west.

- *To achieve reasonable view sharing.*

Comment:

No views will be unreasonably impacted upon.

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

B9 Rear Boundary Setbacks

Description of non-compliance

The proposal will be setback from the rear boundary between 2.4m and 5.5m.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

While not complying with the minimum 6m requirement, the proposal does maintain a significant landscaped area to the rear, but more importantly, maintains a large side setback to the west to help compensate for the non-compliant front and rear setbacks. This is considered a benefit for this particular site due to the nature of the public reserve to the west. The provision of the large side setback area enables significant planting to screen and mitigate the built form from there, and the reduced rear setback will not have any unreasonable impacts on the neighbouring

properties to the rear and east.

- *To create a sense of openness in rear yards.*

Comment:

The proposed secondary dwelling in the rear setback area is single storey, and given the nature of the site and its relationship to the public area to the west, and neighbours to the rear and east, it is considered far more beneficial in this instance to maintain the sense of openness provided by the large side setback on that side, and allow reduced front and rear setbacks in compensation.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The proposal will not result in any unreasonable privacy impacts. The secondary dwelling in the rear setback area is single storey, and will not overlook neighbouring properties.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The neighbours immediately to the east also have structures within the rear setback area, and in this regard the proposal will not be inconsistent with the existing pattern of development. As noted above, the reduced rear setback is considered fair compensation for maintaining a large side setback to the public reserve, allowing for significant vegetation to be maintained on that side.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The proposal does not result in any unreasonable privacy impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

E7 Development on land adjoining public open space

One submission received referred directly to this control and stating that the application did not comply. However, the proposal is considered to comply with all requirements of the control, with the exception of providing fencing along the common boundary with the public open space. A condition of consent has been recommended deleting the fencing. Subject to this condition the proposal is consistent with the requirements and objectives of the control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$9,874 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$987,375.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environment Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/0507 for Demolition works and construction of a dwelling house including a secondary dwelling on land at Lot 25 DP 27009, 147 Campbell Parade, MANLY VALE, 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
19258-19 Sheet 3/13 Issue U	14-04-21	Accurate design and drafting
19258-19 Sheet 4/13 Issue U	14-04-21	Accurate design and drafting
19258-19 Sheet 5/13 Issue U	14-04-21	Accurate design and drafting
19258-19 Sheet 6/13 Issue U	14-04-21	Accurate design and drafting
19258-19 Sheet 7/13 Issue U	14-04-21	Accurate design and drafting
Schedule of Details and Finishes	Not dated	Icon Homes

Engineering Plans		
Drawing No.	Dated	Prepared By
210720	18/04/2021	VNK Consulting

Reports / Documentation – All recommendations and requirements contained

within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	24 July 2020	Tree Repairs
Bushfire Assessment Report 147Cam-03	07.05.2021	Bushfire Consultancy Australia
Flood Study Report Issue C	18 March 2021	VNK Consulting
Preliminary Geotechnical Assessment REF: AG 21148	19.05.2021	Ascent Geotechnical Consulting
BASIX Certificate 1116865M_03	29 April 2021	Abeaut Design

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Job:R20 201019 plan 1/2 Issue C	15/04/21	Andrew Davies Landscape Designer
Job:R20 201019 plan 2/2 Issue C	22/03/20	Andrew Davies Landscape Designer

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	14/07/2020	Caterina Zurlo

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

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

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

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

3. **Prescribed Conditions**

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

Building Code of Australia (BCA).

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS**5. Policy Controls****Northern Beaches 7.12 Contributions Plan 2021**

A monetary contribution of \$9,873.75 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 2021. The monetary contribution is based on a development cost of \$987,375.00.

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 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. Security Bond

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

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

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

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION
CERTIFICATE****7. No Clearing of Vegetation**

Unless otherwise exempt, or approved for removal under this DA, no native vegetation is to be cleared.

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

Reason: To protect native vegetation.

8. Delineation of Asset Protection Zones

Prior to the commencement of any vegetation clearance/modification, the boundaries of the bushfire Asset Protection Zone (APZ) are to be surveyed and clearly marked by way of temporary fencing, flagging tape or markers. Clearing of vegetation for APZ establishment must only occur within the marked APZ boundaries. No clearing is to be undertaken within the adjoining reserve.

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

Reason: To protect native vegetation and wildlife.

9. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

10. Water Quality Management

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

11. **Working and Access on Reserves Permit**

Works (undertaken by principal contractors working without Council supervision) on land owned or managed by Council require a "Working on Reserves" permit prior to commencement. Applications can be obtained from Council's website or the Parks and Recreation business unit. Council reserves the right to either approve or otherwise refuse works on land owned or managed by Council.

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

Reason: Public safety and the protection of Council infrastructure.

12. **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.

13. **Fire Separation - Separating walls**

A separating wall between Class 1 buildings, or a wall that separates a Class 1 building from a Class 10a building which is not associated with the Class 1 building is required to comply with Part 3.7.3.2 of the Building Code of Australia –'Separating Walls'. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY, and generally in accordance with the concept drainage plans prepared by VNK Consultant Pty Ltd, drawing number 210720, dated 18/04/2021. 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.

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. **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.

17. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

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

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

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

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

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

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

19. **Schedule of finishes**

The schedule of finishes is to be amended to finish the external walls in a darker shade than Surfist as currently shown, that shows the development being finished with medium to dark natural colours, to blend with the surrounding natural environment. No white or light coloured finishes are to be included.

Details are to be submitted to the certifying authority prior to issue of a construction certificate.

Reason: To better blend with the surrounding natural environment.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**20. Tree Removal Within the Property**

No prescribed trees (ie. protected under the DCP) within the property are proposed for removal.

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

i) tree 8 - Yucca, tree 9 - Jacaranda, tree 11 - Kentia Palm, tree 12 - Jacaranda, tree 13 - Jacaranda, tree 14 - Jacaranda, tree 19 - Illawarra Flame Tree,

Reason: To enable authorised building works.

21. 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.

22. Protection of Habitat Features

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

Reason: To protect wildlife habitat.

23. Works on Land Owned or Managed By Council

No works are to be carried out on land owned or managed by Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.) and landscaping works on land owned or managed by Council.

Reason: To protect the land owned or managed by Council.

24. Installation and Maintenance of Sediment and Erosion Control

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

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

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

25. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. **Protection of Rock and Sites of Significance**

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

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

27. **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,
- 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) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-

2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

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

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

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

The Certifying Authority must ensure that:

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

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

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

Reason: Tree and vegetation protection.

28. **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.

29. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

30. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

31. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: To protect and/or restore any damaged public asset.

32. **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.

33. **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.

34. **Vehicle Crossings**

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

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

Reason: To facilitate suitable vehicular access to private property.

35. **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.

36. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

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

37. **Landscape Completion**

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

- i) the landscape buffer consisting of small trees and understorey mixed planting indicated along the western boundary shall be continuous from the south west boundary corner to the driveway along the northern boundary, in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- ii) small tree planting shall consist of nine (9) *Elaeocarpus reticulatus* small tree planting along the western boundary and three (3) *Elaeocarpus reticulatus* small tree planting along the northern boundary, and shall be set at no more than 3 metres apart, and all shall be planted at a minimum 75 litre pot container size,
- iii) the boundary fence and gate shall be set on the boundary and not beyond as indicated inadvertently on the Landscape Plan.

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.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative

<https://5milliontrees.nsw.gov.au/>

38. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum

AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

39. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Banksia Design Group 2021) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

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

No Priority or environmental weeds are to be imported on to the site prior to or during construction works.

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

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

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

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

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

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

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

42. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

43. **Removal of All Temporary Structures/Material and Construction Rubbish**

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

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

Reason: To ensure bushland management. (DACPLF01)

44. **Waste Management Confirmation**

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

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

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

45. **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.

46. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

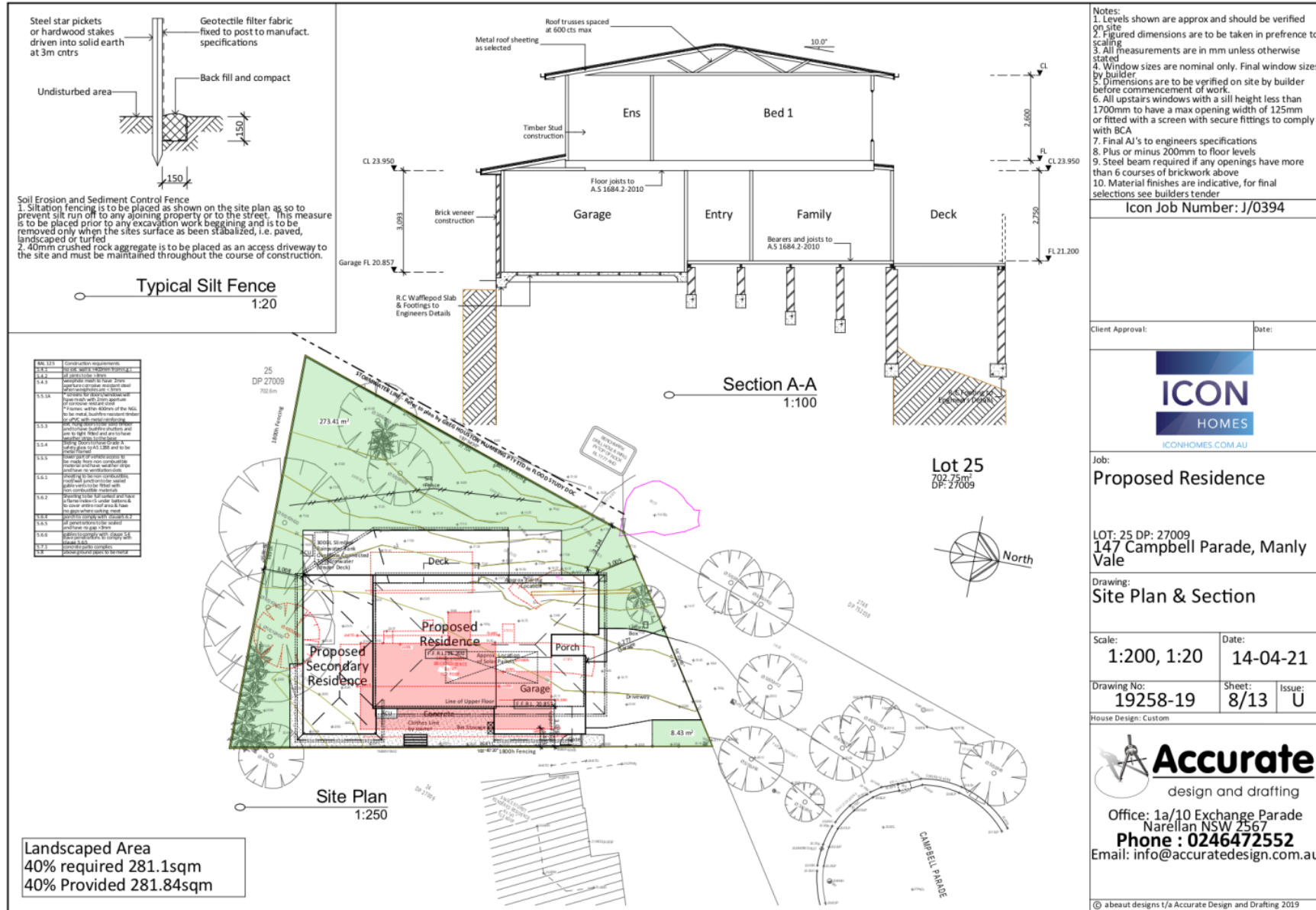
Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

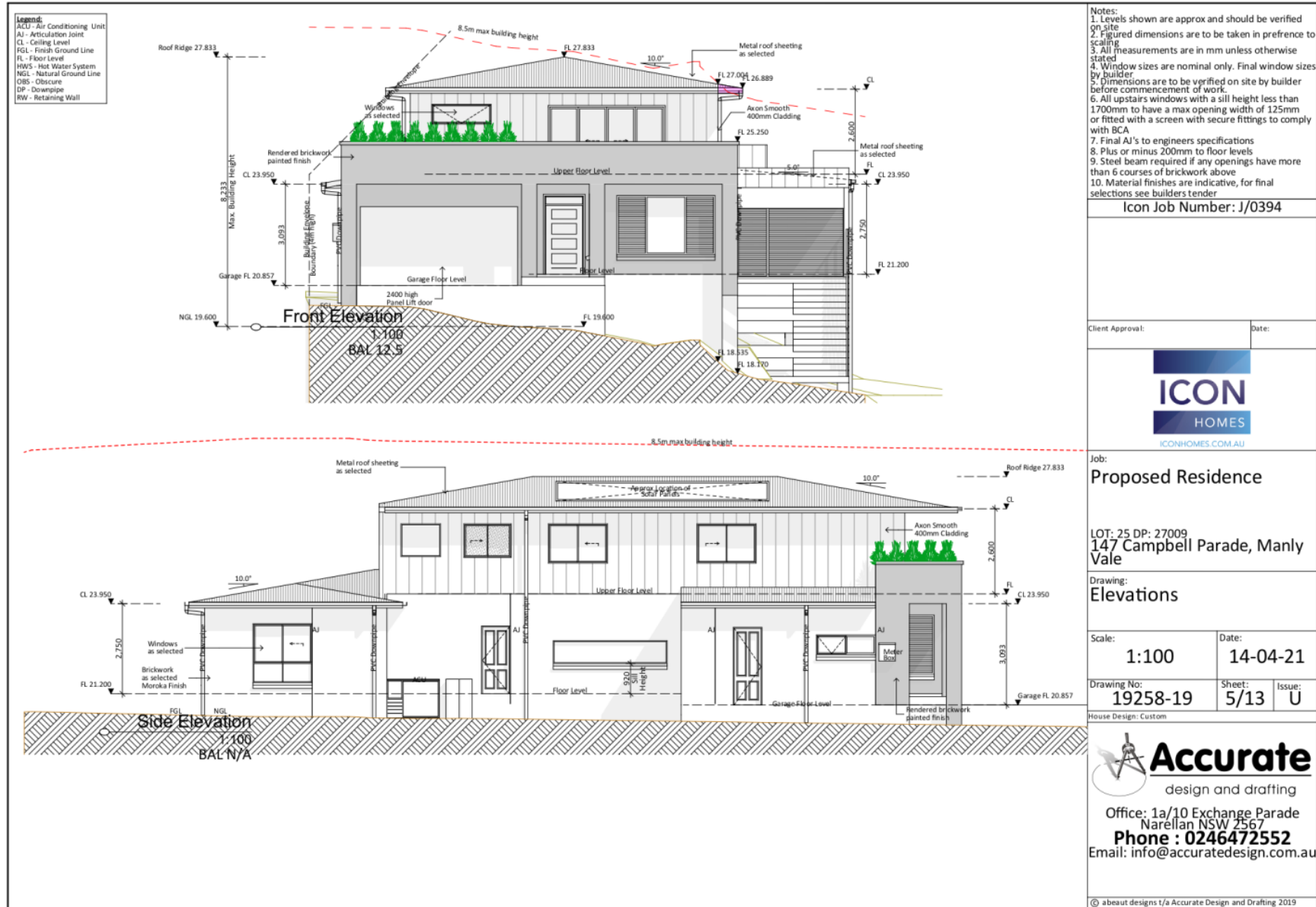
Reason: Protection of the receiving environment.

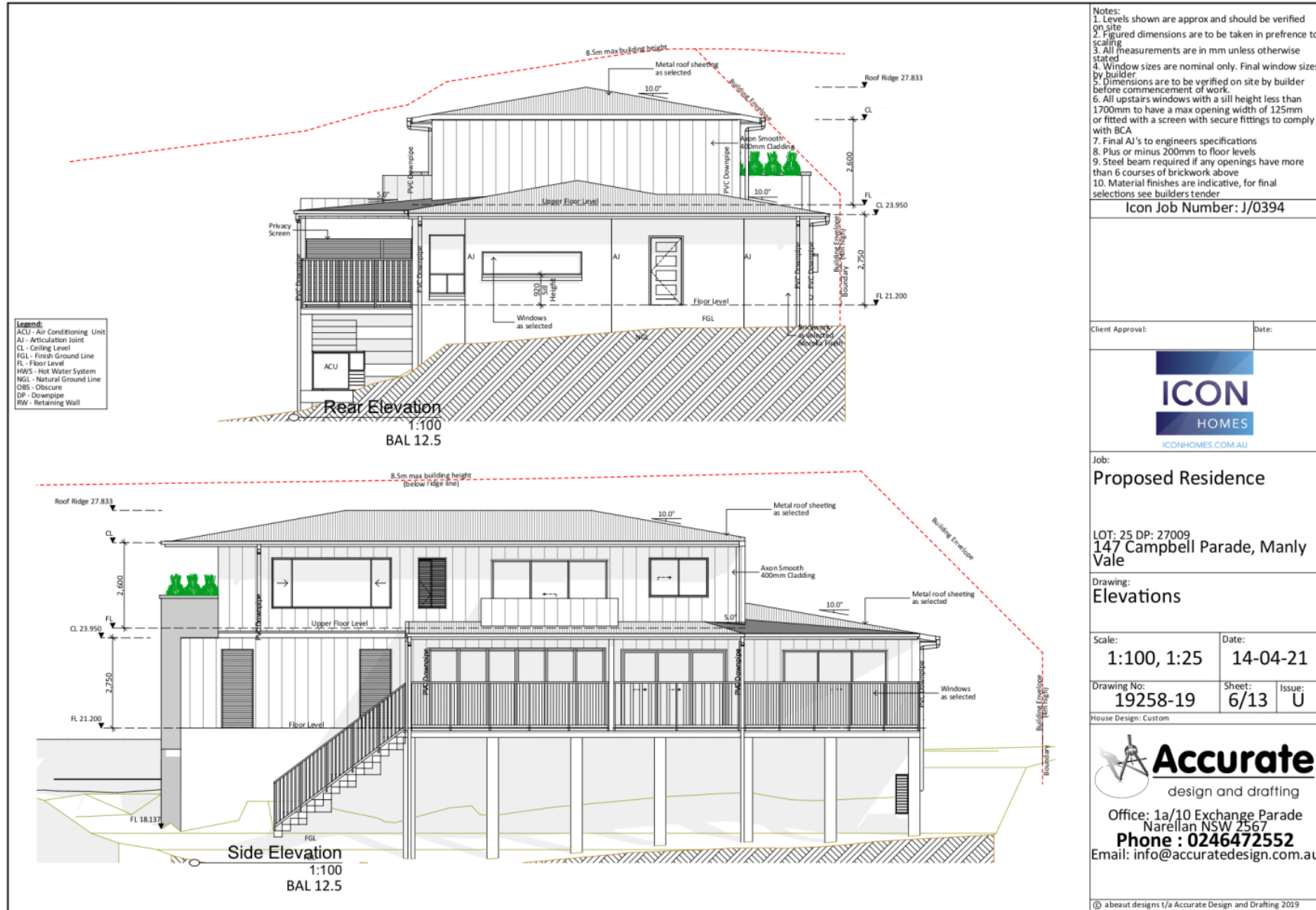
47. **Access to public land**

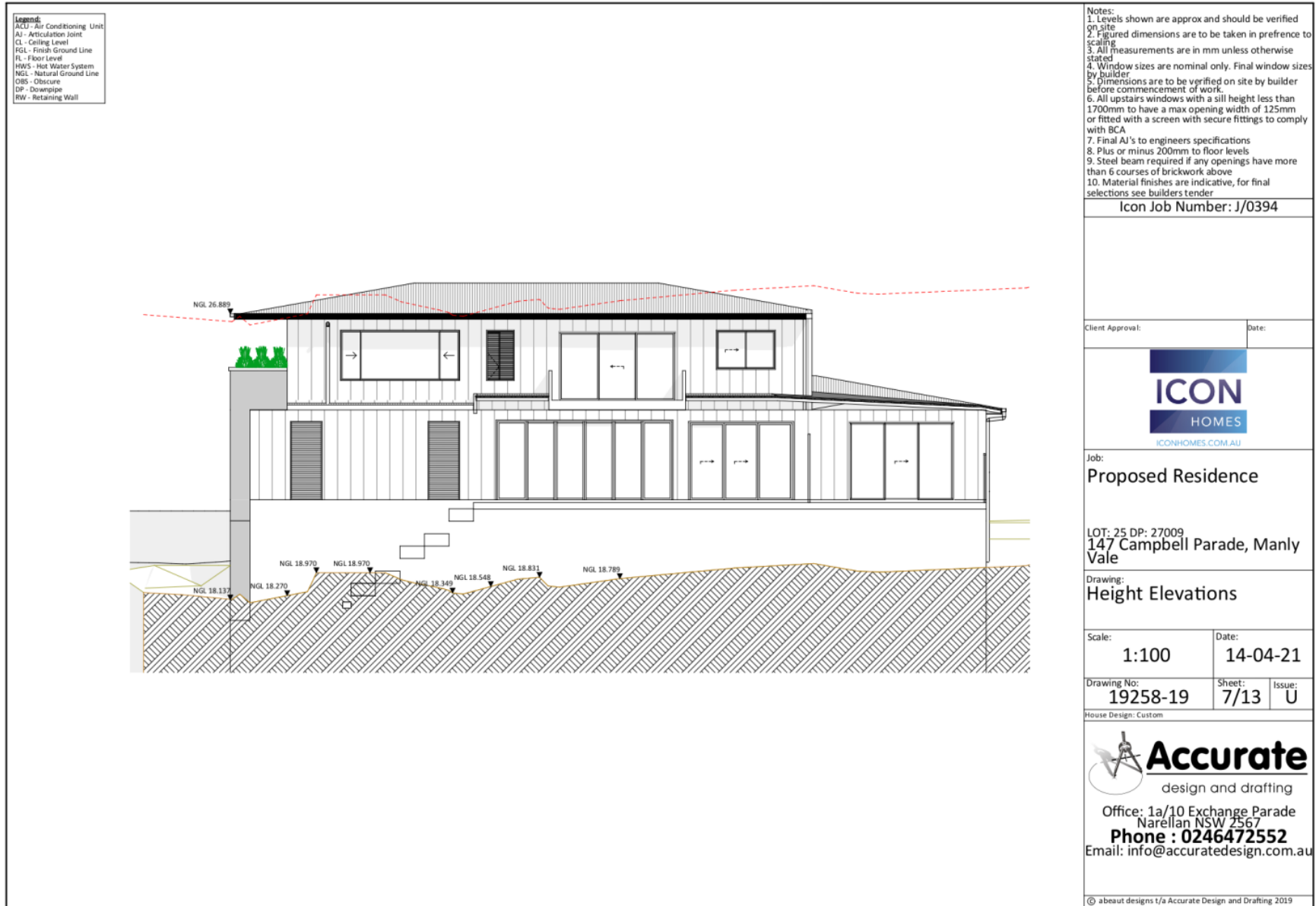
The proposed gate access along the common boundary with the Reserve is not approved under this application.

Reason: Protection of public access to the Reserve.









APPENDIX 1

SECTION 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

Applicant: Metro Planning Services

Site Address: No.147 Campbell Parade, Manly Vale

Proposal: Demolition of existing dwelling and construction of new two (2) storey dwelling and secondary dwelling

Introduction

This request seeks a variation to Clause 4.3 of Warringah Local Environmental Plan 2011, which relates to a '*Height of Buildings*' development standard.

The submission has been prepared in support of a development application which seeks consent for the construction of a new two (2) storey dwelling and attached secondary dwelling on a site located at No.147 Campbell Parade, Manly Vale.

Clause 4.6 (Exceptions to Development Standards) of Warringah Local Environmental Plan 2011 is the mechanism available to applicants to seek a variation to a development standard. Clause 4.6 states the following:

"4.6 Exceptions to development standards

1) *The objectives of this clause are:*

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

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

3) *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) *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 Director – General has been obtained.*

5) *In deciding whether to grant concurrence, the Director – General must consider:*

- a. *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- b. *The public benefit of maintaining the development standard, and*
- c. *Any other matters required to be taken into consideration by the Director-General before granting concurrence.*

6) *Consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone RU5 Large Lot Residential, Zone E2 Environmental Management or Zone E4 Environmental Living if:*

- a. *Subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- b. *The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by development standard.*

7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

8) *This clause does not allow consent to be granted for development that would contravene any of the following:*

- a. *A development standard for complying development,*
- b. *A development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies for the land on which such a building is situated,*
- c. *Clause 5.4."*
- ca. *Clause 6.4, 6.5, 6.6, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29 or 7.30.*

Planning Instrument

The Environmental Planning Instrument to which this variation relates is the Warringah Local Environmental Plan 2011, as amended.

The subject site is zoned R2 Low Density Residential under the WLEP 2011.

Development Standard

The requirements of Clause 4.3 - 'Height of Buildings' is as follows:

4.3 Height of Buildings

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

The site is mapped with a maximum building height of 8.5 metres under Clause 4.3 of WLEP 2011. The proposed dwelling has a maximum height of 8.75 metres which is 0.25m (2.9%) higher than the mapped height limit.

Justification for Variation of the Standard

Justification for the variation of the 'height of buildings development standard contained under Clause 4.3 is established against the provisions of Clause 4.6, as follows:

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

This submission seeks an exception to a development standard.

The site is mapped with a maximum 'height of buildings' standard of 8.5 metres. The proposed dwelling has a maximum height of 8.75 metres which is 0.25m (2.9%) higher than the mapped height limit requirement. The exceedance is localised at the front north western point of the dwelling as identified on the front northern elevation and western side elevation plans.

It is noted that the objectives of Clause 4.6 seek to recognise that in particular circumstances, strict application of development standards may be unreasonable or unnecessary. The clause provides a means by which a variation to the standard can be achieved.

Strict compliance would prove unreasonable in this case as the non-compliance with the building height standard will not have a significant impact from the street or surrounding properties and compliance would mean that the dwelling would not satisfy flood management constraints of the site.

The area of non-compliance is a result of the site's flooding and topography constraints. The area of the non-compliance is unlikely to result in unreasonable amenity impacts to the surrounding area and will not detract from the streetscape or the scenic qualities of the adjoining Mermaid Pools reserve. Therefore, it is in our opinion, that the extent of variation is appropriate in this instance.

In our opinion, given the above-mentioned reasons, the proposal is not likely to result in significant impacts on the surrounding area and flexibility with the development standard is considered reasonable.

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

The exception is sought under subclause (2) to the mapped "Height of Buildings" requirement of 8.5 metres under Clause 4.3 of Warringah Local Environmental Plan 2011. Clause 4.3 is not excluded from the operation of this clause.

- 3) *Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:***
- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and***
 - b. *That there are sufficient environmental planning grounds to justify contravening the development standard.***

This submission forms the written request to Northern Beaches Council which justifies the contravention of the development standard for a maximum height of building of 8.5m on the mapped site that the subject land falls within under Clause 4.3. Clause 4.6(3)(a) requires the applicant to provide justification that strict compliance with the mapped 'Height of Buildings' requirement is unnecessary and unreasonable in the particular circumstances of the case.

We have considered *Wehbe v Pittwater Council* (2007) NSWLEC 827, *Preston CJ* which established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. The Court's recent decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 has altered the way the five tests ought be applied, requiring justification beyond compliance with the objectives of the development standard and the zone. That is, more than one of those five grounds is now arguably required to be made out.

It is our opinion that the proposal satisfies a number of the five tests established in *Wehbe* and for that reason the development standard is unreasonable and unnecessary in this instance.

The relevant tests are considered below:

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard

As indicated, this request seeks to vary the application of Clause 4.3 to the subject development. It is our opinion that the objectives of the height of buildings development standard are satisfied, notwithstanding the non-compliance. In considering the variation we have given consideration to the objectives of Clause 4.3.

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

The slight height exceedance occurs at an isolated point on the north western corner of the proposed dwelling. The minor non-compliance of 0.25m is not out of character with the surrounding low density residential area and the proposed dwelling achieves a bulk and scale that is compatible with neighbouring properties and streetscape.

Therefore, it is in our opinion that the minor height non-compliance is not likely to have an unreasonable impact on neighbouring properties.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

The proposal has been assessed in relation to view loss and privacy, as well as overshadowing within the Statement of Environmental Effects Report (SEE) separately submitted. It has been concluded that the proposal meets the Council objectives in minimising impacts in this regard and therefore meets this objective.

In regard to visual impacts, it is considered that the amended dwelling design comprises a number of architectural treatment measures, including a recessed upper first floor level, reduced deck area and increased landscaping provision to achieve a development that has a compatible bulk and scale to the low density residential character of the area and will blend in with the natural qualities of the Mermaid Pools reserve.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

As stated above, the proposed dwelling sitting and design will make a positive contribution to the natural scenic qualities of the area.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The proposal has been assessed in relation to existing visual impacts when viewed from Mermaid Pool reserve and it has been concluded there will be no adverse visual impacts. The dwelling is highly articulated and comprises a wide range of architectural treatment measures to create a development that makes a positive contribution to the scenic qualities of the surrounding natural environment.

In our opinion, the proposal is consistent with this objective.

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

In our opinion, the underlying purpose of the development standard is to present a building that is compatible with the height, context and character of the locality, whilst preserving the amenity of adjoining properties and the natural environmental qualities of the adjoining Mermaid Pools reserve to the west.

Accordingly, in our opinion the requirement to comply with the height of buildings development standard is unnecessary in this circumstance of the case, as the bulk, scale and massing is compatible with surrounding dwellings in the immediate area without adversely impacting the scenic qualities of the adjoining Mermaid Pools reserve. On this basis, it will not result in any significant adverse amenity impacts on neighbouring properties.

Test 3 - The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The non-compliance with the development standard will not be inconsistent with any planning objectives for the locality. The proposed development is a permissible use in the R2 Low Density Residential zone with consent and is also consistent with the objectives of the R2 Low Density Residential zone which are stated, inter alia:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Based on the objectives of the zone, it is in our opinion that the underlying purpose of the development standard is to present a building that is of a low density character, which preserves the natural features of the locality and is compatible with the height, context and character of the neighbouring properties. As discussed in this report and the accompanying SEE, the proposal has been designed to maintain the amenity and desired future character of the area and be sympathetic to the natural features of the area.

The dwelling has been carefully designed to accommodate the site's flood and topography constraints and achieve a dwelling that presents a height which is complementary to the streetscape. Therefore, it is considered unreasonable to adhere to strict compliance for the isolated part of the dwelling where the exceedance occurs.

The development provides the subject site with a dwelling of high quality architectural design that will provide occupants with well-designed internal and external spaces in a desirable locality. The non-compliance with the height will not thwart the proposal's ability to meet the relevant zone objectives. Rather, it is considered that adhering to strict compliance would reduce the proposal from maximising the potential of the site and thus reduce the amenity of the dwelling. Strict compliance would not take into consideration the circumstances of the case, being the flood and topography constraint and thus the numerical non-compliance. Accordingly, it is in our opinion that the non-compliance will not result in inconsistency with existing and future planning objectives for the locality.

On this basis, we consider that to apply the development standard would thwart the underlying standard.

Test 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;

The Standard has not been virtually abandoned or destroyed. However, we are aware of other similar cases on sloping sites within Northern Beaches Council LGA boundaries where the development standard has been varied.

It is recognised that each application is assessed on its own merits and each site has different characteristics. However, it is a relevant consideration to understand if the Council has accepted breaches to the mapped 'height of buildings' standard in the past and under what circumstances the breach was supported and if indeed there are any comparable principles to the subject DA.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

In our opinion, the proposal satisfies the requirements of the 'unreasonable and unnecessary' tests established by the Court in *Wehbe*.

4) 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 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

Again, it is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under subclause 3.

The applicant submits that the consent authority can and should be satisfied of each of these requirements for Clause 4.6(4), for all of the reasons set out in this request, and also having regard to the context of this particular site.

As indicated, it is in our opinion that the proposal is in the public interest. In accordance with Test 1 in *Wehbe* and Clause 4.6(4)(a)(ii) an assessment of the proposal against both the objectives of the standard and the zone is undertaken. The consideration of the objectives of the standard is set out in this submission and in our opinion, the proposal is consistent. A more detailed assessment of the proposal against the objectives of the zone is undertaken in the submitted Statement of Environmental Effects Report.

5) In deciding whether to grant concurrence, the Director-General must consider:

a. Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

- b. The public benefit of maintaining the development standard, and*
- c. Any other matters required to be taken into consideration by the Director – General before granting concurrence.*

It is considered that the variation sought raises no matter of significance for State or regional environmental planning.

In our opinion, the proposal is appropriate for the locality and strict compliance would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979.

For the reasons contained in the SEE and this submission, in our opinion, there are sufficient environmental planning grounds to justify varying the development standard. It is considered that there is no benefit to the public or the community in maintaining the development standard.

- 6) Consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - a. The subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - b. The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Non-applicable. On this basis, the variation sought is not contrary to subclause (6).

- 7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

- 8) This clause does not allow consent to be granted for development that would contravene any of the following:*
 - a. A development standard for complying development,*
 - b. A development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - c. Clause 5.4. ca. Clause 6.4, 6.5, 6.6, 6.7, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29, or 7.36."*

This proposed development is not complying development.

The proposal is supported by a BASIX Certificate.

The development is not affected by clauses 6.4, 6.4, 6.5, 6.6, 7.22, 7.23, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29 or 7.30.

Conclusion

In summary, it is our opinion that the variation request hereby submitted should be supported and the height of buildings development standard under Clause 4.3 varied, as the proposed development is consistent with the objectives of the 'height of buildings' development standard.

Further, the development will result in no detrimental impacts upon the natural environment or amenity of adjoining properties.

We have considered the proposal in accordance with the various tests established in *Wehbe v Pittwater Council* (2007) NSWLEC 827, Preston CJ and have demonstrated that maintaining the development standard is unreasonable and unnecessary in the circumstances.

We have also given consideration to Paragraph 3 of Circular No. B1 from the former Department of Planning which states -

"As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard."

It is our opinion that the variation to the standard prescribed by Warringah Local Environmental Plan 2011, as amended, has been shown to be consistent with the aims of Clause 4.6 and is consistent with the objectives of the standard. As such, strict adherence to the standard is unreasonable and unnecessary in the circumstances of the case.

For these reasons it is in our opinion that the variation is appropriate, consistent with the intent of Clause 4.6 and should be supported.

ITEM 3.2

**DA2021/0101 - 1 SEDDON HILL ROAD, FRESHWATER -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING A SWIMMING POOL.**

REPORTING MANAGER Anna Williams

TRIM FILE REF 2021/579538

ATTACHMENTS

- 1 Assessment Report**
- 2 Site Plan & Elevations**
- 3 Report - Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants 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.
- B. THAT Council, as the consent authority, **approves** Development Consent to DA2021/0101 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 4 DP 305295, 1 Seddon Hill Road, Freshwater, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0101
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 4 DP 305295, 1 Seddon Hill Road FRESHWATER NSW 2096
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Craig John Key Sonja Marija Bianca Key
Applicant:	Poppy Bevan Design Studio
Application Lodged:	25/03/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	21/06/2021 to 05/07/2021
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 8%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,519,892.00

The application seeks consent for the construction of a new dwelling on the subject site. The application was the subject of a pre-lodgement with Council, at which time the merits of the proposal were acknowledged and the proposal was supported, subject to minor areas of refinement. The application before Council is now generally consistent with the direction provided during the pre-lodgement process.

The proposed new dwelling is generally maintained within the footprint of the existing dwelling, which results in considerable departure from the 6m rear setback prescribed by WDCP 2011. This area of non-compliance is the primary focus of submissions received from the adjoining property to the north, with additional concerns relating to geotechnical risk maintained by properties to the east, down slope.

These matters, in addition to other areas of concern, have been addressed in detail within this report, and subject to the imposition of appropriate conditions, do not result in unreasonable impacts upon adjoining properties or warrant the refusal of the application.

As three separate objections are maintained in relation to the proposal and as the cost of works exceeds \$1 million, the application is referred to the Development Determination Panel (DDP) for determination.

The proposal also includes a minor variation to the 8.5m height of buildings development standard, however the extent of non-compliance is not the contributing factor for the referral to the DDP. Nonetheless, the DDP can be satisfied that the proposed building height variation is acceptable in the circumstances of the case, and that the necessary matters of clause 4.6 have been satisfactorily addressed.

Accordingly, the application is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the demolition of the existing dwelling and the construction of a new dwelling at the subject site. Specifically, the application proposes:

- demolition of the existing dwelling,
- the construction of a one and two storey dwelling, comprising an open plan living area, 4 bedrooms and 3 bathrooms, wrapped around a central north facing courtyard,
- the construction of a detached double carport,
- stormwater infrastructure, and
- landscaping.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
 Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 4 DP 305295 , 1 Seddon Hill Road FRESHWATER NSW 2096
Detailed Site Description:	<p>The site is an irregular shape, with a 12.195m wide skewed frontage to Seddon Hill Road, a maximum depth of 32.145m and a total area of 496.6sqm. The north-western corner of the site, where an existing one and two storey dwelling is located, is the highest part of the site and is relatively level, by virtue of an existing rock outcrop and historical fill. The site slopes steeply away in a south-easterly direction, with a maximum fall of approximately 5.5m.</p> <p>The site is located at the top of the ridge line, in a visually prominent location. Conversely, expansive ocean and district views are available from the property. The site is surrounded by residential development of varied density, character and architectural style.</p>

Map:



SITE HISTORY

On 8 December 2020, PLM2020/0275 was held in relation to the proposed development. The PLM report concludes:

The proposal is considered to have merit, particularly given the unique constraints of the site. However, a number of issues have been identified which require attention. In its current form, the proposal could not be supported, however, provided the issues raised in these notes are incorporated into the final design, the proposal could be supported.

The issues identified in the PLM report were in relation to the side and rear setbacks, with the following direction provided by Council:

- All works along the eastern side boundary should achieve a 900mm setback, and
- The dwelling should be setback 2m from the rear boundary, with all decks setback 1m from the rear boundary.

Of relevance, the PLM report was supportive of the proposed building height, building envelope and front setback breaches in consideration of the constraints and circumstances of the site.

On 25 March 2021, the subject application was lodged with Council.

On 19 May 2021, additional information was requested in relation to:

- Building height and proximity of development to the eastern boundary,
- Proximity of the development to the southern boundary,
- Visual privacy,
- Impacts upon views, noting that the view loss analysis did not consider one potentially impacted property,
- Stormwater management,
- Geotechnical assessment, and

- Insufficient documentation.

On 11 June 2021, amended plans and additional information were submitted by the Applicant. The key amendments to the proposal can be summarised as follows:

- increased eastern side setback at ground level to achieve strict compliance with 900mm minimum prescribed,
- increased eastern side setback at upper level to reduce height and envelope breach,
- increased setback (1m) between northern-eastern deck and northern rear boundary,
- increased setback (1m) between swimming pool and northern rear boundary,
- additional privacy attenuation measures,
- additional landscape details, and
- removal of absorption trench initially proposed, replaced with piped system to down slope infrastructure.

The amended application demonstrates strict adherence with the 900mm eastern side setback and all decks along the rear boundary are 1m from the boundary. The proposed development does not strictly achieve the 2m minimum setback outlined in the prelodgement minutes, with a 1.8m setback proposed in the north-western corner of the site. The 200mm incursion within the specified setback is not considered to detrimentally impact upon the suitability of the proposal, and is off-set by the larger setbacks proposed to the north-eastern portion of the building, being 2.5m at ground level and 7.2m at the upper floor.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration'	Comments
Regulation 2000)	<p>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested during the assessment process, as outlined further in the report.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/06/2021 to 05/07/2021 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 process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Michael John Addison Boston Blyth Fleming Pty Ltd	C/- Vaughan Milligan Development Consulting Pty Ltd Po Box 49 NEWPORT NSW 2106
Mr Anthony John Gilchrist	30 The Drive FRESHWATER NSW 2096
Mr Craig Elliott Withell	32 The Drive FRESHWATER NSW 2096
Joy Sherlock	36 The Drive FRESHWATER NSW 2096

In response to the initial notification of the application, submissions were received from or on behalf of four adjacent properties (30, 32, 36 and 38 The Drive, Freshwater). Following the receipt of amended plans, the application was re-notified, and further submissions were received from or on behalf of three adjacent properties (30, 32 and 38 The Drive, Freshwater). The concerns raised in the submissions are addressed as follows:

- **Rear setback**

Submissions have been received from and on behalf of the owners of the site to the north at 38 The Drive in objection to the proximity of the proposed development to the northern rear boundary. The submissions highlight non-compliance with the 6m rear setback prescribed by WDCP 2011, and raise specific objection in relation to the proximity of the north-eastern corner balcony, the swimming pool and the two storey element in the north-western corner.

The proposed dwelling is generally sited within the footprint of the existing dwelling, at the highest and most-level portion of the site. This has obvious benefits for the future occupants of the dwelling with regard to solar access and views, but also ensures that site disturbance and excavation is generally avoided and that impacts upon adjoining properties are minimised, in so far as they are not dissimilar to that of the existing development on the site.

Specific concern was raised in relation to the nil setback proposed between the north-eastern corner balcony and the northern setback and the 0.5m setback to the swimming pool, with a request for a minimum setback of 900mm to be provided. In response to these concerns, the proposal was amended to achieve a 1m setback between these elements and the northern boundary.

As discussed in detail with regard to clause B9 of WDCP 2011, the proximity of the development to the northern boundary does not give rise to any unreasonable impacts upon the amenity of the property to the north, with appropriate measures in place to maintain privacy between the two adjacent sites.

Despite non-compliance with the 6m minimum setback prescribed, the siting of the development is considered to be an appropriate contextual response to the development of the constrained site, with greater setbacks than that afforded by the existing dwelling on site.

A further submission was received on behalf of the adjoining property owners at 38 The Drive suggesting that approval of the proposed rear setback non-compliance would set an undesirable

precedence "that would impact on the consistency of decision makers in applying these controls for future developments in this locality". Precedence is not of concern in this instance, as the proposed departure from the rear setback control is warranted in light of the individual circumstances of the case.

- **Eastern side setback**

Submissions were received in response to the notification of the original plans with concerns raised in objection to any encroachments within the 900mm minimum eastern side setback prescribed by WDCP 2011. In response to these concerns, the proposal was amended to achieve strict compliance with the 900mm setback prescribed. The amended plans were re-notified, and these concerns were not maintained in any subsequent objections.

The submissions also touch on the visual impact of the underside of the structures in question. A landscape plan has been prepared to demonstrate the incorporation of plantings, where practical. Conditions to require the use of dark colours or natural finishes to the underside of structures are also recommended in this regard.

- **Overshadowing**

Submissions have been received from or on behalf of the owners of 30, 32 and 38 The Drive, raising concerns with regards to overshadowing. As discussed with regard to clause D6 of WDCP 2011, the proposal will result additional overshadowing of adjoining properties between 9am and 3pm in midwinter. However, the resultant overshadowing is not unreasonable, with each property maintaining adequate solar access and daylight during midwinter.

- **Implications on the assessment of DA2021/0472 at 38 The Drive**

A submission has been received from the owners of 38 The Drive raising concerns in relation to any potential impacts that the proposed development may have upon the assessment of the development application lodged in relation to their property (DA2021/0472). In particular, the submission suggests that support of any non-compliance in relation to the subject site will unreasonably prejudice the assessment of impacts associated with their proposed development.

For example, the submission suggests that the non-compliant rear setback of the proposed dwelling will negatively prejudice the siting of structures on their site to the north, requiring the northern site to have greater southern setbacks to avoid overshadowing. However, the solar access controls of clause D6 of WDCP 2011 only relate to overshadowing of private open space, which is permitted and anticipated within the rear setback area. As such, the non-compliant siting of the dwelling does not limit the siting of any future development on the site to the north in this regard.

The proposed development is not considered to unreasonably impact upon the development potential of the adjoining property, specifically in such circumstances where the proposal is largely maintained within the footprint of the existing dwelling.

- **Visual privacy**

A submission has been received from the owners of 38 The Drive raising concerns in relation to overlooking, specifically in relation to the window on the upper floor of the northern elevation associated with Bedroom 4, the open style fence adjacent to the swimming pool and the balcony immediately adjacent to the northern boundary. The submission specifically requested the extension of the boundary fence/privacy screen along the northern elevation of the north-eastern balcony to restrict any direct line of sight between the two properties. In response to these concerns, the application has been amended, as follows:

- the incorporation of a privacy screen to the northern window of Bedroom 4,

- the replacement of the open pool fence with a solid masonry wall, and
- an increased setback between the balcony and the northern setback (1m) and the incorporation of a privacy screen.

The amended plans were re-notified and new objection was raised in relation to the privacy screen proposed adjacent to the balcony, suggesting that it adds unreasonable bulk and scale to the proposed development. The privacy screen is limited in size and scale, and addresses earlier concerns raised in relation to visual privacy, specifically the request from the owners of 38 The Drive to extend the proposed screening.

- **Bulk and scale**

Submissions have been received from the adjoining property owners of 38 The Drive in relation to bulk and scale. The submissions suggest that the scale of the development is excessive, particularly the two storey element in the north-western corner of the site, and that the upper floor should be set back from the level below.

When viewed in context, the scale of the one and two storey dwelling proposed is comparably modest, with the upper floor limited to approximately half the area of the ground floor below. The two storey element in the north-western corner is limited in area and height, and has been sited to minimise adverse impacts upon adjoining properties and the surrounding environment.

- **Geotechnical assessment**

Submissions were received from two down slope properties (30 and 32 The Drive) in relation to geotechnical risk in response to both rounds of notification. In response to concerns raised in the initial notification process, an amended geotechnical report was presented to Council. Unfortunately, this was not uploaded to Council's website during the second notification process, and as such, the initial concerns regarding the limited nature of the geotechnical assessment were maintained. The amended geotechnical report has subsequently been presented to the adjoining property owners.

The owner of 30 The Drive maintains concerns in relation to the amended geotechnical report, specifically with regard to the construction of a block work fence in the south-east corner of the site. The amended geotechnical report confirms that this area of the site comprises fill, and whilst minor excavation will be required in this area for footings associated with the fence, the geotechnical report states that all excavation "will be taken almost entirely through medium strength sandstone". As such, the adjoining property owner is concerned that the report has not considered the impact of the construction of the fence.

It is acknowledged that the report does not specifically address the construction of the fence in question, however the fence is shown on the plans included within and referenced in the report. Further, page 16 of the amended geotechnical report includes a "Type Section - Diagrammatical Interpretation of Expected Ground Materials" which clearly demonstrates a degree of existing fill beneath the proposed carport and fence. The amended geotechnical report includes a series of recommendations to minimise geotechnical risk, including the following requirement:

All footings are to be inspected and approved by the geotechnical consultant while the excavation equipment and contractors are still onsite and before steel reinforcing is placed or concrete is poured.

Council is satisfied that the geotechnical investigations meet the provisions of Council's policy, with conditions recommended to require consistency with the recommendations of the geotechnical report.

- **Stormwater management**

Submissions were received from two down slope properties (30 and 32 The Drive) in relation to stormwater management. The main concerns related to the incorporation of a dispersion trench that has since been removed from the proposal and replaced with a piped connection to Council's system down slope. In response to the notification of the amended proposal, a new area of concern was raised by the owners of 30 The Drive in relation to the location of the proposed stormwater connection on the adjacent public land.

Council's Development Engineer has recommended conditions of consent in relation to the stormwater connection, which are viewable on Council's website. The property owner of 30 The Drive has since reviewed these conditions and has confirmed that the recommended conditions satisfy their concerns in this regard.

- **Building height**

A submission was received in objection to the building height non-compliance proposed in the plans initially lodged with Council. The extent of the height breach has been reduced in the amended plans, and as discussed with regard to clauses 4.3 and 4.6 of WLEP 2011, the minor height non-compliance does not give rise to any unreasonable impacts. The amended plans were re-notified and the concerns raised with regard to building height were not pressed.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>No objection - Conditions recommended.</p> <p><i>Councils Landscape Referral section has considered the application against the Warringah Local Environment Plan, and the following Warringah DCP 2011 controls:</i></p> <ul style="list-style-type: none"> • <i>D1 Landscaped Open Space and Bushland Setting</i> • <i>E1 Preservation of Trees or Bushland Vegetation</i> <p><i>The Statement of Environmental Effects provided with the application notes that no trees or vegetation shall be removed as a result of the proposed development. This is supported by the Architectural Plans as no trees or vegetation have been indicated as removed.</i></p> <p><i>It is noted that an existing tree is located centrally within the site, adjacent to existing rock, concrete stairs and pathway. Although on plan proposed works fall within the Tree protection Zone and Structural Root Zone of this tree, it is noted that the tree is located on top of an existing rock shelf, and as a result its root structure is already restricted and not likely to follow the normal root growth that you would expect from this tree. That being said, as it is not fully known the extent of these roots, it is recommended that a Project Arborist be engaged to supervise all demolition, excavation and construction works within the TPZ of this tree. It is also worth noting that the site is located on a steep slope, with the existing and proposed dwelling located at the high point, with vegetation below, largely along the eastern boundary. The retention of this tree, as well</i></p>

Internal Referral Body	Comments
	<p><i>as other vegetation on site is vital to satisfy control E1, as key objectives include "to protect and enhance the scenic value and character that trees and/or vegetation provide", as well as "to effectively manage the risks that come with an established urban forest through professional management of trees". Simultaneously, this existing tree is also necessary to satisfy control D1 as it provides valuable built form mitigation and softening, which is a key aspect of this control.</i></p> <p><i>It is noted on the Architectural Plans that a garden bed is proposed adjacent to the northern boundary, however no details regarding proposed planting has been provided. It is recommended that planting in this area be able to achieve a minimum height of 1.8m (approximate height as the proposed boundary fence and wall) once mature, as this will help soften the built form whilst also providing additional privacy for both the proposed dwelling as well as its neighbours to the north.</i></p> <p><i>The landscape component of the proposal is therefore accepted subject to the protection of existing tree and vegetation as well as additional screening planting adjacent to the proposed swimming pool.</i></p>
NECC (Bushland and Biodiversity)	<p>No objection - Conditions recommended.</p> <p><i>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</i></p> <p><i>Biodiversity Conservation Act 2016 (BC Act)</i> <i>Warringah Local Environmental Plan (WLEP)</i> <i>Warringah Development Control Plan (WDCP)</i></p> <ul style="list-style-type: none"> • <i>Clause E2 Prescribed Vegetation</i> • <i>Clause E6 Retaining unique environmental features</i> <p><i>The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</i></p>
NECC (Coast and Catchments)	<p>No objection - No conditions.</p> <p><i>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</i></p> <p><u><i>Coastal Management Act 2016</i></u> <i>The subject site has been identified as being within the coastal zone</i></p>

Internal Referral Body	Comments
	<p><i>and therefore Coastal Management Act 2016 is applicable to the proposed development.</i></p> <p><i>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</i></p> <p><u><i>State Environmental Planning Policy (Coastal Management) 2018</i></u> <i>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.</i></p> <p><i>On internal assessment, the DA satisfies requirements under clauses 14 and 15 of the CM SEPP.</i></p> <p><i>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</i></p> <p><u><i>Warringah LEP 2011 and Warringah DCP 2011</i></u> <i>No other coastal related issues identified.</i></p> <p><i>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</i></p>
NECC (Development Engineering)	<p>No objection - Conditions recommended.</p> <p><i>The proposed connection of stormwater from the site is satisfactory subject to conditions.</i></p> <p><i>No objection to approval, subject to conditions as recommended.</i></p>
NECC (Water Management)	<p>No objection - Conditions recommended.</p> <p><i>No objection to the proposal subject to conditions.</i></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 continued residential land use proposed.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1125620S dated 1 February 2021).

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

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

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

SEPP (Coastal Management) 2018

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

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

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Variation	Complies
Height of Buildings:	8.5m	9.177m	677mm or 8%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low Density Residential

The proposed development is consistent with the objectives of the R2 Low Density Residential Zone, as follows:

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

Comment: The proposed will provide a single dwelling house that positively contributes to the surrounding predominant low density residential environment.

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

Comment: Not applicable.

- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment: The proposed development provides a landscape outcome that is appropriate for the constrained nature of the site and that is commensurate with the landscaped setting of surrounding development.

4.3 Height of buildings

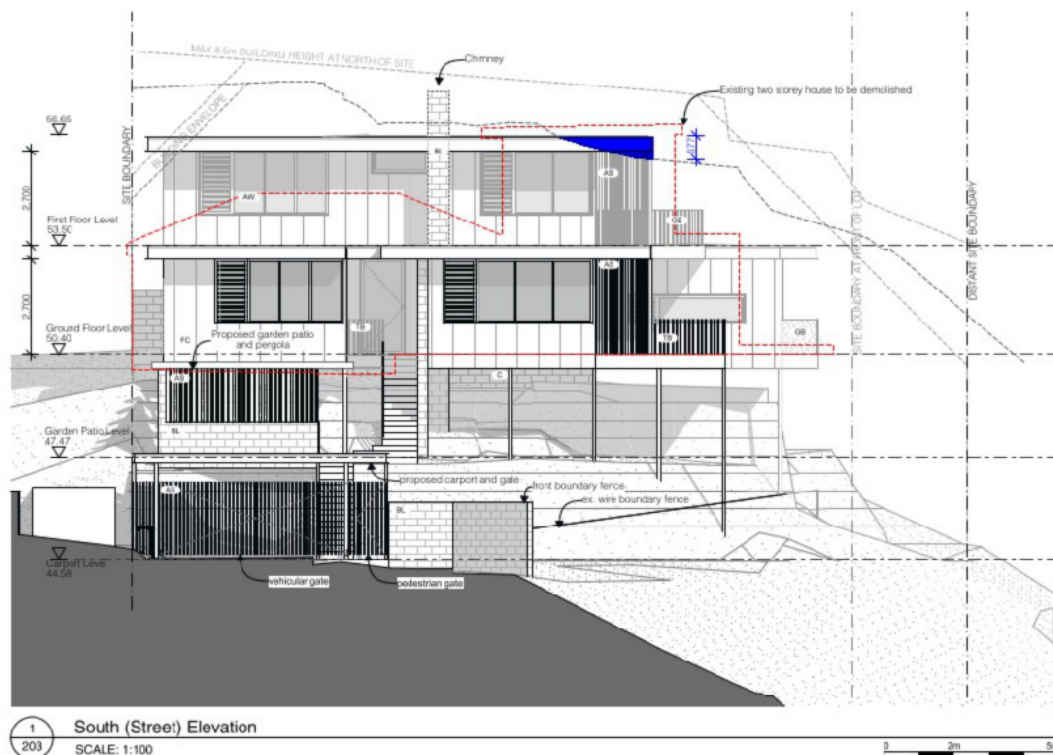
and 4.6 Exceptions to development standards

With a maximum building height of 9.177m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP 2011 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the building height development standard is not expressly excluded and thus, the clause can be applied in this instance.

What is the extent of the breach?

The proposed development reaches a maximum height of 9.177m, representative of a 677mm or 8% variation to the 8.5m maximum building height development standard. The maximum height occurs in the south-eastern corner of the upper roof form, the extent of which is illustrated in blue in the diagram, below.



Has the applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of WLEP 2011, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the

criteria of clause 4.6(3) of WLEP 2011. The application was supported by a detailed submission (attached) addressing the provisions of clause 4.6 of WLEP 2011. The submission has been considered with regard to the criteria of clause 4.6(3) of WLEP 2011, as follows:

- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council [2007] NSWLEC 827*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission has satisfactorily demonstrated that the proposed development will achieve consistency with the objectives of the building height development standard.

- b. *That there are sufficient environmental planning grounds to justify contravening the development standard.*

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118*, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act. The applicant's submission highlights a number of reasons/grounds for the proposed departure from the building height development standard, the most pertinent being:

- The extent of the breach is minor and without impact,
- The majority of the dwelling is maintained below the height limit,
- The breach occurs as a result of the constraints of the site, namely, the steep fall of the land,
- The breach is limited to an eave, which provides weather protection and improved amenity for occupants of the dwelling,
- The proposed development is orderly, in so far as the proposed height is less than the height of the dwelling that currently exists on site, and
- The bulk, scale and perceived height of the development would generally remain unchanged, even if strict compliance was achieved.

The applicant has appropriately related these reasons/grounds to the relevant objects prescribed by clause 1.3 of the Act, and overall, the applicant's submission is considered to establish sufficient environmental planning grounds to justify the proposed contravention of the building height development standard.

Therefore, the consent authority can be satisfied that the applicant's request has satisfactorily addressed the matters required by clause 4.6(3) of WLEP 2011.

Is the proposal in the public interest?

Under the provisions of clause 4.6(4)(a) of WLEP 2011, consent must not be granted to a proposal that contravenes a development standard unless the proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

The proposal is considered to be consistent with the objectives of the building height development standard, as follows:

- *to ensure that buildings are compatible with the height and scale of surrounding and nearby*

development,

Comment: The maximum RL of the proposed new dwelling, at 56.65m AHD, is comparable to the maximum ridge lines of adjoining development to the west, being RL 56.84m AHD at 3 Seddon Hill Road and RL 56.85m AHD at 9 Lodge Lane. The two storey scale of the building is also compatible with that of surrounding built form, which is generally 2 and 3 storeys in height. The proposed development will appear higher than surrounding development when seen from down slope. However, this arises due to the steep fall of the land, as opposed to the minor area of non-compliance. The upper floor is setback from the level below, and the non-compliance is generally limited to the eave that provides articulation and shading to the dominant glazed facade.

- *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment: The proposed development does not result in any unreasonable impacts upon adjoining properties with regard to views, privacy or solar access. By virtue of the fall of the land and the prominent location of the site, the development will be highly visible from down slope. However, the applicant has worked to minimise this impact by reducing the width of the eastern end of the upper floor, so that it is only 4.6m wide along a 32m wide side boundary. Furthermore, the visual impact of the development is minimised by virtue of the degree of articulation along the eastern elevation and the proposed colour palette.

- *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

Comment: The proposed development will be visible when moving along the coastline, specifically when walking along Carrington Parade. However, as above, the visual impact of the development has been appropriately minimised, and will not adversely impact the scenic quality of the locality.

- *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Comment: The development has been designed to appropriately respond to the visual prominence of the site.

Furthermore, as discussed separately above, the proposal is considered to be consistent with the relevant objectives of the R2 Low Density Residential Zone.

Therefore, the consent authority can be satisfied that the proposal is in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 20-002 dated 5 May 2020, the Secretary's concurrence may be assumed by a delegate of Council (and the DDP) as the extent of the non-compliance is less than 10%.

Conclusion

Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of WLEP 2011,

and the proposed building height variation can be supported.

6.2 Earthworks

Council can be satisfied that the matters outlined in this clause have been considered, as follows:

- *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality*

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

- *the effect of the proposed development on the likely future use or redevelopment of the land*

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

- *the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- *the effect of the proposed development on the existing and likely amenity of adjoining properties*

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

- *the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- *the likelihood of disturbing relics*

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

- *the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

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

6.4 Development on sloping land

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- *the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*
- *the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*
- *the development will not impact on or affect the existing subsurface flow conditions.*

The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert, which concludes that the proposed development is acceptable from a geotechnical perspective, subject to consistency with the nominated recommendations. The application was also by a detailed stormwater management plan to ensure suitable stormwater management for the site.

The application has been assessed by Council's Development Engineers in relation to both the geotechnical affectation and stormwater, and no objections have been raised in this regard, subject to conditions. Therefore, Council can be satisfied of the matters listed above

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Variation	Complies
B1 Wall height	7.2m	8.7m	1.5m	No
B3 Side Boundary Envelope	West: 5m	outside	0.9m	No
	East: 5m	outside	2.1m	No
B5 Side Boundary Setbacks	West: 0.9m	0.9m (dwelling) Nil (carport)	- 0.9m	Yes No
	East: 0.9m	0.9m	-	Yes
B7 Front Boundary Setbacks	6.5m	12m (dwelling) Nil (carport)	- 6.5m	Yes No
B9 Rear Boundary Setbacks	6m	1.8m (dwelling) 1m (pool)	4.2m 5m	No No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% 198.6sqm	35% 172.9sqm	12% 25.7sqm	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

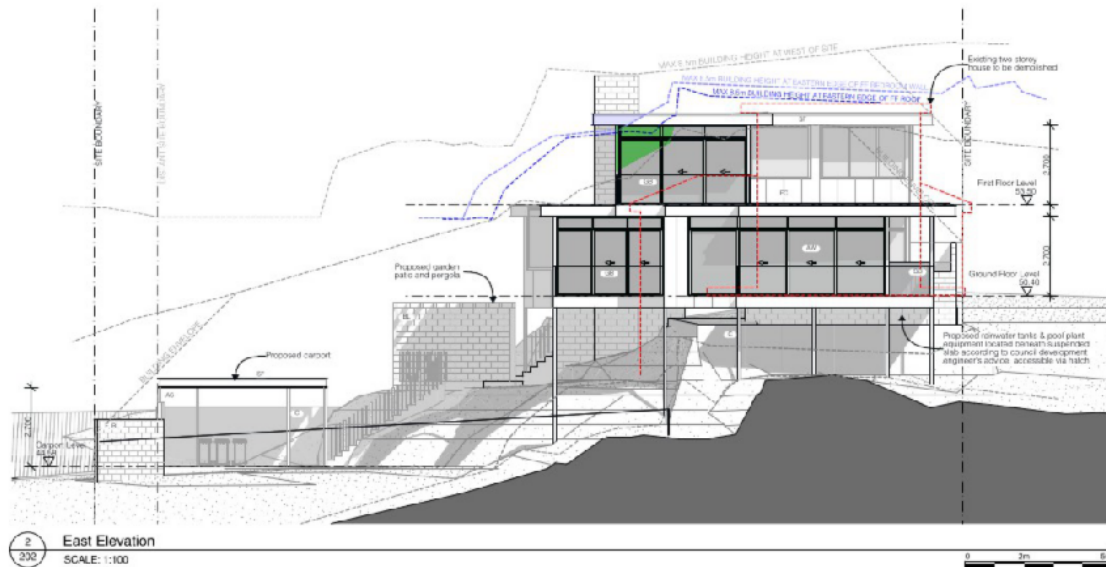
Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

The south-eastern corner of the upper floor extends beyond the 7.2m wall height, with a maximum wall height of approximately 8.7m. Whilst a 1.5m non-compliance is not numerically insignificant, the

proposed non-compliance occurs where the land falls steeply away, and as such the extent of the proposed breach is comparably limited (as shown in green in the diagram, below).



The maximum wall height non-compliance is supported in this instance, as the proposal achieves the objectives of the wall height control, as follows:

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

Comment: The portion of the development where the wall height non-compliance occurs is setback from the level below, and sited at a distance of more than 5m from the eastern side boundary. The width of the upper (first) floor is limited to only 4.6m along at 32m long side boundary. In an area where most dwellings are designed to maximise the length of the eastern orientation towards the available views, the proposed development is comparably modest, with a reduced upper floor eastern elevation compared to that which currently exists. In this regard, the visual impact of the development is considered to be appropriately minimised.

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

Comment: The subject site is located on a ridge line with very little surrounding canopy. However, an existing canopy tree is located centrally on the site and is proposed to be retained. The development will be of a height comparable to that of the existing tree.

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

Comment: The application was supported by detailed view analysis and no specific concerns were raised in relation to views in the submissions received. The non-compliant portion of the development is not considered to result in any unreasonable impacts upon views.

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

Comment: The wall height non-compliance is comparably minor, and does not result in any

unreasonable impacts upon the amenity of nearby or adjoining properties.

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

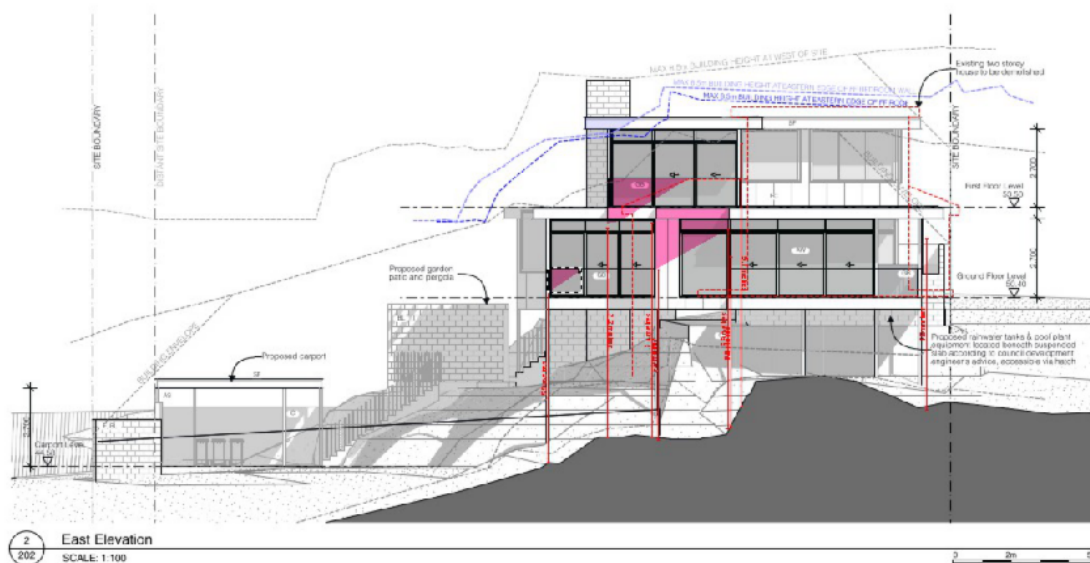
Comment: With the exception of the proposed swimming pool, the development has been designed to sit atop the existing building platform and avoid excavation. The wall height non-compliance occurs where the development is sited on piers where the land falls away steeply to the south-east.

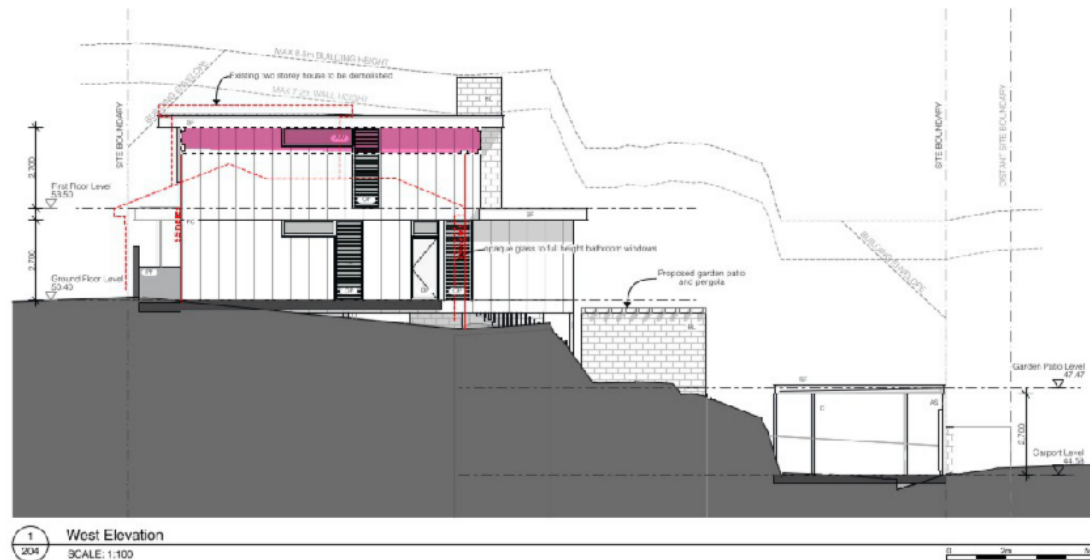
- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment: The proposed development incorporates a flat roof, to further minimise the visual impact of the proposal.

B3 Side Boundary Envelope

The proposed development extends beyond the prescribed building envelope on both side elevations, to the extent shown in pink on the diagrams below. The minor areas of non-compliance are supported, as the overall bulk and scale of the development is minimised, and as the design is considered to be an appropriate response to the constrained site.





Furthermore, despite non-compliance, the development is consistent with the objectives of the building envelope control, as follows:

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

Comment: The visual dominance of the development is a result of the location and prominence of the site, as opposed to the height and bulk of the development. The proposed development is well refined, to ensure that the bulk and scale of the development is minimised, particularly when seen in it's context amongst other surrounding built form.

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

Comment: As discussed in detail with regard to D6 (Access to Sunlight) of WDCP 2011, the proposed development does not result in any unreasonable overshadowing of adjoining properties. Furthermore, due to the distinct change in levels between the proposed development and the properties to the east, the proximity of the proposed balconies does not give to any unreasonable overlooking.

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

Comment: The proposed development incorporates light-weight construction to minimise excavation on the site, and with specific regard to the eastern elevation, the upper floor is setback from the level below to respond to the fall of the land.

B5 Side Boundary Setbacks

Whilst the proposed dwelling is sited in compliance with the 900mm setback prescribed by this control, the detached double carport that is proposed to be sited with a nil setback to the western side boundary is non-compliant in this regard. It is noted that this control includes an expressed exclusion that

provides for minor areas of non-compliance associated with single storey ancillary structures, including carports.

The location of the proposed carport and the application of the expressed exclusion is supported on merit, as the objectives of the side setback are achieved:

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

Comment: By siting the carport hard against the western boundary, the deep soil landscaped area to the east of the carport is maximised.

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

Comment: The subject site is located away from the main roadway, accessed via a shared driveway within the road reserve. As such, the proposed light-weight carport structure will not be readily visible from the public domain. Due to the angle of view from Seddon Hill Road, the reduced setback from the western boundary actively reduces the visual impact of the carport as seen from the public domain.

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

Comment: The bulk and scale of the open-style carport has been appropriately minimised.

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

Comment: The proposed location of the carport does not give rise to unreasonable impacts upon the amenity of the adjoining property to the west.

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

Comment: The proposed carport will not result in any unreasonable impacts upon views.

B7 Front Boundary Setbacks

The proposed carport is located forward of the 6.5m minimum setback prescribed by this control. The location of the proposed carport is supported in consideration of the constraints of the site, most notably the rock outcrop located immediately to the north of the proposed carport, which actively restricts the placement of any parking structures on the site. Compliance with the 6.5m control would result in considerable site disturbance, excavation and potential tree removal, which would be antipathetic to the aims of the DCP.

The non-compliance is also supported in circumstances where the objectives of the control are achieved, as follows:

- *To create a sense of openness.*

Comment: The proposed open-style carport does not detrimentally impact upon the sense of openness of the frontage of the site.

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

Comment: The proposed carport is to be sited in the same approximate location of the existing hardstand, and will maintain the existing pattern of hard stand areas and landscaping. Furthermore, in a streetscape dominated by parking structures, the proposed carport will not be visually jarring or out of character with surrounding development.

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

Comment: The proposed carport will not be readily visible from the public roadway. Nonetheless, when visible, the carport does not diminish or negatively impact upon the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment: The proposed carport does not impact upon views.

B9 Rear Boundary Setbacks

The proposed development is inconsistent with the 6m rear setback prescribed by this control. The siting of the proposed dwelling is largely consistent with the footprint of the existing dwelling, at the highest and most level portion of the site. This actively reduces site disturbance and excavation that would otherwise be required if the dwelling was to be relocated elsewhere on the site.

The three distinct areas of non-compliance are addressed, as follows:

North-western corner (1.8m setback to wall)

The two storey north-western corner element is setback 1.8m from the northern rear boundary, inconsistent with the 6m prescribed by this control. The corner element is limited to a width of 5.2m and accommodates two bedrooms (one on each level). The boundary fence will provide privacy from any overlooking from the ground floor bedroom window, with a privacy screen proposed to minimise overlooking from the top floor bedroom window. The built form does not give rise to unreasonable overshadowing or impacts upon existing views, and is setback 1.8m further from the boundary when compared to the existing dwelling.

The 1.8m setback proposed is 200mm less than the 2m setback recommended by Council in the prelodgement meeting. However, requiring an additional 200mm setback is not considered to be any benefit, as the 1.8m setback is considered to be supportable on merit.

North-eastern corner (1m to deck, 2.5m to wall)

The deck that wraps around the single storey north-eastern corner element is setback 1m from the northern rear boundary, with a 2.5m setback to the external wall. The setback of the deck has been increased from nil to 1m, and a privacy screen has been included, to address concerns regarding overlooking raised by Council and the adjoining property owners to the north. The deck and the single storey north-eastern corner element are consistent with the recommendations of Council in the prelodgement meeting.

The north-eastern corner element is limited to 6.5m in width and is single storey in height, with the

second floor set back 7.2m from the northern rear boundary. The siting of the built form is similar to that which currently exists, with slightly increased setbacks and additional privacy measures, which will result in an improved relationship between the property and its northern neighbour.

Swimming pool (1m setback to coping)

The swimming pool is setback 1m from the northern boundary. The siting of swimming pools within the rear setback is generally anticipated, with a nominated exception to the control for swimming pools that occupy less than 50% of the rear setback area. The swimming pool is more of a plunge pool, with an area of only 6.8sqm, and is consistent with the nominated exception.

Overall, the siting of the proposed new dwelling is acceptable on merit, as the proposal does not detract from consistency with the objectives of the control, as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment: The existing dwelling is sited with a nil setback to the northern boundary and no opportunity for planting within the rear setback currently exists or is able to be maintained. Furthermore, the rear setback area is almost entirely comprised of sandstone rock outcrops, limiting the potential for any meaningful deep soil landscaping. As such, even if the dwelling was to be setback in strict accordance with the control, there is unlikely to be opportunity for deep soil landscaping.

- *To create a sense of openness in rear yards.*

Comment: The elements that extend within the rear setback are somewhat offset by the proposed 7.2m deep northern courtyard. Furthermore, the sense of openness is enhanced by the light-weight architectural style/form of the proposed new dwelling, and the transparent nature of the north-eastern corner of the building.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment: As above, the proposed dwelling is generally sited within the footprint of the existing building, with enhanced setbacks to the northern rear boundary. Furthermore, the proposed dwelling provides additional screening measures, to improve privacy and amenity compared to what currently exists. The current level of amenity afforded to adjoining dwellings is considered to be preserved, if not enhanced, as a result of the proposal.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment: The subdivision pattern is highly irregular, and whilst the northern boundary is the rear setback for the subject site, the characterisation of the boundary differs for each of the adjoining dwellings. The northern boundary is a side boundary of the property to the north (38 The Drive), and the continuation of the northern boundary to the east is also a side boundary between properties to the east and north-east (34 and 36 The Drive).

By developing within the footprint of the existing dwelling, the proposal maintains the existing visual continuity and pattern of buildings, rear yards and landscape elements.

- *To provide opportunities to maintain privacy between dwellings.*

Comment: The proposed development provides appropriate privacy measures to maintain privacy between dwellings.

D1 Landscaped Open Space and Bushland Setting

The proposal falls shy of the 40% minimum landscaped area prescribed by this control, with a total landscaped area calculation of approximately 173sqm or 35% of the total site. However, it is noted that the proposal would comply if you were to include the areas to the east of the building that extend below the elevated balconies that are able to (and are proposed to) accommodate landscaping.

The proposed non-compliance is supportable on merit, as the development is consistent with the objectives of the control, as follows:

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

Comment: The majority of the landscaped area is located towards the frontage of the site. However, given the irregular subdivision pattern, the site is not readily visible from the street.

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

Comment: The proposed development has been designed to minimise site disturbance and the need for excavation, ensuring that the topographical features of the site are maintained. Whilst the application proposes additional landscaping across the site, it is noted that the majority of the landscaped areas comprise only turf. It is considered that the proposal would benefit from a site specific landscaped solution, prepared by a suitably qualified landscape designer, to ensure that the plantings are appropriate for the location and its unique constraints. The proposed landscaping should also be complemented by at least one new/additional canopy tree and additional medium shrubs.

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

Comment: The proposed landscaped area is largely comprised of turf. Whilst the exposed nature of the site and the presence of rock outcrops will hinder the incorporation of extensive landscaping across the site, it is considered that an appropriately qualified landscape designer would be able to enhance the landscaping on the site to off-set the additional built form proposed.

- *To enhance privacy between buildings.*

Comment: The minor area of landscaped area non-compliance does not give rise to unreasonable impacts upon the privacy of adjoining properties.

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

Comment: The proposed landscaped area non-compliance does not diminish opportunities for outdoor recreation, and future occupants of the proposed dwelling will have a variety of spaces for outdoor recreation designed to enable outdoor recreation in different climatic conditions.

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

Comment: The proposed development comprises an area for clothes drying, however as it is not

2m deep, the area cannot be included within the landscaped area calculation.

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

Comment: The application was supported by a stormwater management plan that is supported by Council's Development Engineers.

D6 Access to Sunlight

Clause D6 of WDCP 2011 prescribes that at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. The application was supported by detailed shadow diagrams that demonstrate the resultant impact of the proposed development in midwinter compared to the level of overshadowing that currently exists. The diagrams confirm that the proposed development will result in additional overshadowing of down slope properties from midday to 3pm in midwinter.

Specifically, the proposed development will result in additional overshadowing of the rear yard of 32 The Drive during the afternoon, which includes an area of private open space. The shadow diagrams confirm that this area will not receive 3 hours of direct sunlight to 50% of this area in midwinter. However, the area in question is already overshadowed for the majority day in midwinter. The existing overshadowing arises not only as a consequence of the existing dwelling at the subject site, but due to the significant slope of the land and the nature of the area in question, being excavated into the southern side of the slope. Further overshadowing can also be attributed to existing landscaping, which has not been included in the shadow diagrams provided.

Whilst the proposal will increase the extent of overshadowing to the rear setback as a whole, the proposal is not considered to result in unreasonable overshadowing of the area of private open space. The dwelling at 32 The Drive comprises multiple other areas of private open space at the front of the dwelling that will receive direct solar access through until midday in midwinter, compliant with the 3 hour requirement.

D7 Views

The application was supported by detailed view loss analysis demonstrating that the proposal would not result in any unreasonable impacts upon views currently enjoyed by adjoining properties and no submissions were received in this regard.

Upon review of the analysis provided and inspections of the site, it is apparent that the change to the built form may alter some existing views currently enjoyed. However, the degree of change is minor, if not inconsequential, in consideration of the expansive views available to nearby and adjoining properties.

D8 Privacy

The proposed dwelling is primarily oriented to the east towards the ocean views, with balconies proposed 900mm from eastern side boundary. Whilst the adjoining dwellings and associated areas of private open space are located within 9m to the east of the dwelling, the proposal does not result in unreasonable overlooking of these properties due to the steep fall of the land and the 7m - 10m difference between the ground floor level of the proposed dwelling and the floor levels of the upper floors of the dwellings to the east.

Where located within 9m of areas of private open space, windows and balconies oriented to the north incorporate screens to minimise overlooking of adjoining properties. As such, the proposal is consistent with the provisions of this clause and reasonable privacy between properties is achieved.

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 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$15,199 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,519,892.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and

demonstrated that:

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/0101 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 4 DP 305295, 1 Seddon Hill Road, FRESHWATER, 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
101 Site Plan, issue B	10 June 2021	Poppy Bevan Design Studio
104 Ground Floor Plan, issue B	10 June 2021	Poppy Bevan Design Studio
105 First Floor Plan, issue B	10 June 2021	Poppy Bevan Design Studio
106 Carport & Street Entry Plan, issue B	10 June 2021	Poppy Bevan Design Studio
107 Landscape Plan, issue B	10 June 2021	Poppy Bevan Design Studio
201 North Elevation, issue B	10 June 2021	Poppy Bevan Design Studio

202 East Elevation, issue B	10 June 2021	Poppy Bevan Design Studio
203 South Elevation, issue B	10 June 2021	Poppy Bevan Design Studio
204 West Elevation, issue B	10 June 2021	Poppy Bevan Design Studio
301 Section A, issue B	10 June 2021	Poppy Bevan Design Studio
302 Section B, issue B	10 June 2021	Poppy Bevan Design Studio

Engineering Plans		
Drawing No.	Dated	Prepared By
SW1 Cover Sheet and Notes, issue A	10 June 2021	Water Design Civil Engineers
SW2 Stormwater Management Plan, issue A	10 June 2021	Water Design Civil Engineers
SW3 Stormwater Outlet Site Discharge Plan, issue A	10 June 2021	Water Design Civil Engineers
SW4 Sections and Details, issue A	10 June 2021	Water Design Civil Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report J2953A	11 June 2021	White Geotechnical Group
BASIX Certificate 1125620S	1 February 2021	Poppy Bevan

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	1 March 2021	Poppy Bevan

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

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

2. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS**4. Policy Controls****Northern Beaches 7.12 Contributions Plan 2021**

A monetary contribution of \$15,198.92 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 2021. The monetary contribution is based on a development cost of \$1,519,892.00.

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 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. Security Bond

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

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

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

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

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

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

The applicant is to lodge a bond of \$5,000 as security against any damage to Council's infrastructure during the construction of the private drainage line in Council's road reserve 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

7. **Pier Footing Design Near Trees to be Retained**

Pier footing structural layout plans for the external works including the proposed pergola and decks shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer. The Arborist shall review, comment, recommend design revision as required and approve the pier footing layout, to ensure the locations of piers will be manageable in terms of tree protection measures.

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

Reason: Tree protection.

8. **Amended Landscape Plan**

The Approved Landscape Plan referenced in Condition 1 of this consent is to be amended by a suitably qualified landscape designer, as follows:

- a. One (1) additional locally native canopy tree with a minimum maturity height of 8m is to be incorporated to the east of the proposed carport, but not within 3m of the eastern side boundary.
- b. Three (3) locally native shrubs with a minimum maturity height of 3m are to be provided to the south-east of the proposed dwelling, as close to the building as possible.
- c. The proposed *Bambusa compacta* along the northern side of the pool is to be replaced by *Acmena smithii* 'Minor', *Grevillea sericea*, *Syzygium* 'Cascade' or similar.

The landscape designer is to ensure appropriate species selection and pot sizes in light of the constraints and exposure of the site.

The Amended Landscape Plan is to be provided to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure a high quality landscape treatment of the site.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Approved Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Boundary Identification Survey**

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

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

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

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

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management Policy, and generally in accordance with the concept drainage plans prepared by Waterdesign Civil Engineers, drawing number 2021-017 SW1, SW2, SW3 and SW4 Issue A dated 10.06.2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The overflow from the combined OSD/Rainwater tanks must be connected to the outlet pipe from the control pit.
2. An approval for the connection of the outlet pipe down Seddon Hill Rd to The Drive must be obtained from Council.

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

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

12. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the private stormwater pipeline within Seddon Hill Road which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1 and the submitted drainage plans by Waterdesign Civil Engineers, job number 2021-017, drawing SW3 Issue A dated 10.06.2021. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. The outlet pipe is to be positioned along the high side of the concrete path to ensure no disturbance to the existing landscaping on the low side.
2. A kerb is to be provided at the outlet to The Drive to protect the outlet pipe.
3. A services plan is to be submitted to ensure no services are impacted by the pipeline.
4. All disturbed surfaces are to be restored to match the existing.

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

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

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. **Compliance with Standards**

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

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

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

15. **Schedule of External Colours and Finishes**

A Schedule of External Colours and Finishes is to be prepared to demonstrate consistency with the following:

- a. All external fibre cement cladding is to be finished in a medium to dark tone, with a medium or darker solar absorbance.
- b. All roofing and gutters are to be finished in Colorbond 'Monument'.
- c. All door/window frames and balustrades are to be finished in Colorbond 'Monument' or an equivalent or darker tone.
- d. All screens are to be constructed of natural timber or are to be finished in a medium to dark

tone, with a medium or darker solar absorbance, to blend with the finishes of the external wall cladding.

- e. All exposed structural elements, including steel fascia and steel columns, are to be finished in Colorbond 'Monument' or an equivalent or darker tone.
- f. The eastern ground floor balconies are to be constructed of natural timber (ie: timber decking boards) or the underside is to be finished in Colorbond 'Monument' or an equivalent or darker tone.

The Schedule of External Colours and Finishes is to be incorporated into the design of the development and submitted to the Certifying Authority prior to the issue of the construction certificate.

The development is to remain consistent with the Schedule of External Colours and Finishes for the life of the development.

Reason: To minimise the visual impact of the development.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

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

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

All tree protection measures specified must:

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

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

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

17. **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.

18. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

19. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

20. **Installation and Maintenance of Sediment and Erosion Control**

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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. **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.

23. **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.

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. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

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

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

26. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

27. **Compliance with Geotechnical Report**

The proposed development is to be undertaken in strict compliance with the recommendations and requirements of the Approved Geotechnical Report referenced in Condition 1 of this consent.

Reason: To ensure that the site is managed appropriately with regard to geotechnical hazard.

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

28. **Landscape Completion**

Landscaping is to be implemented in accordance with the Amended Landscape Plan required by this consent.

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

Reason: Environmental amenity.

29. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

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

No Priority or environmental weeds are to be imported on to the site prior to or during construction works.

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

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

31. **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) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan) and Hydraulic Engineers' certification.

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

certificate of title demonstrating the creation of the positive covenant and restriction over the on-site storm water disposal structures is to be submitted.

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

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

32. **External Colours and Finishes**

The as-built development is to be in accordance with the Schedule of External Colours and Finishes required by this consent.

Prior to the issue of the occupation certificate, written certification including photographic evidence is to be provided to the Principal Certifying Authority, confirming compliance in this regard.

Reason: To ensure that the visual impact of the proposal is appropriately minimised.

33. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the

issue of the occupation certificate.

Reason: To protect human life.

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

34. **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.

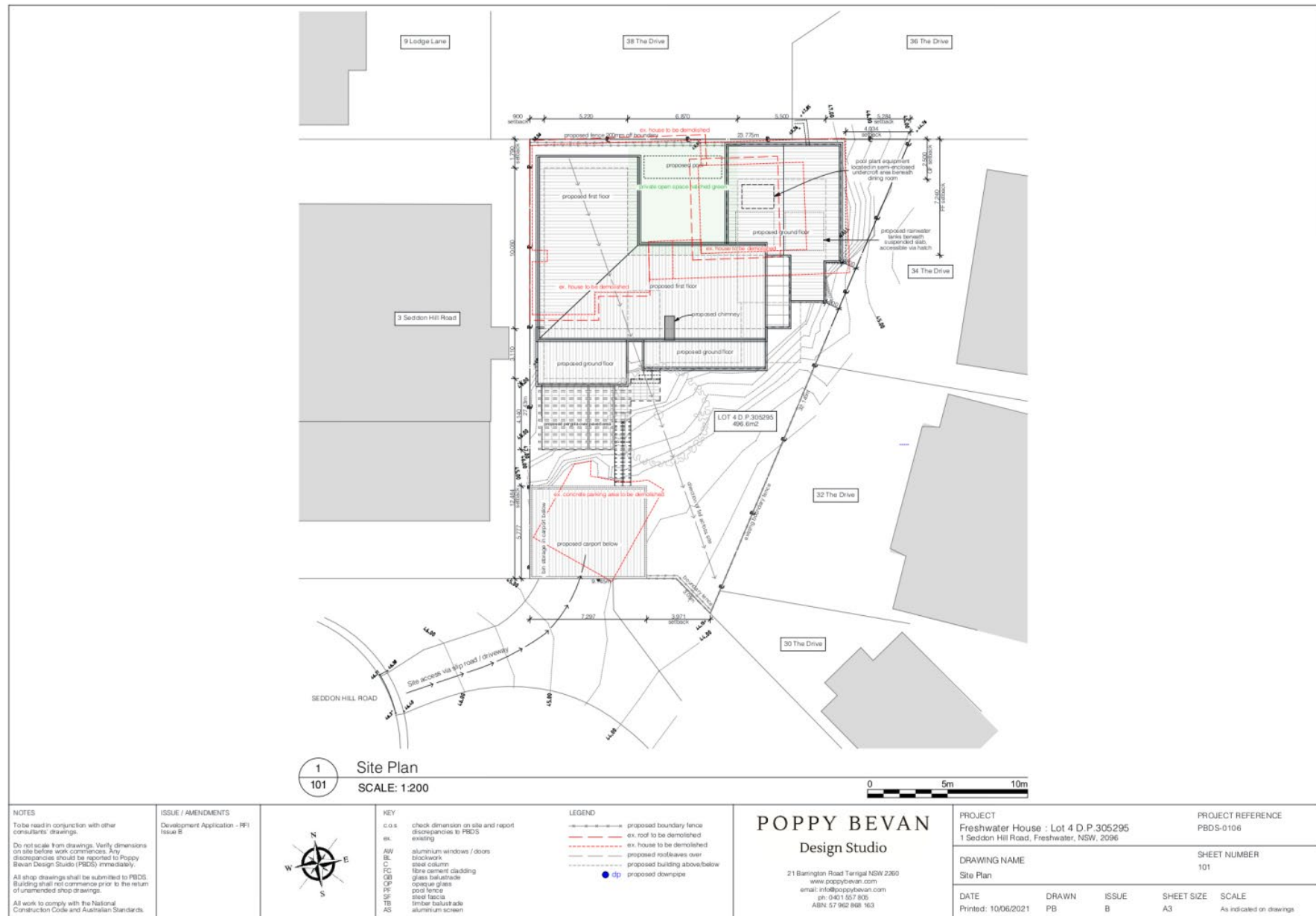
Reason: To maintain local environmental amenity.

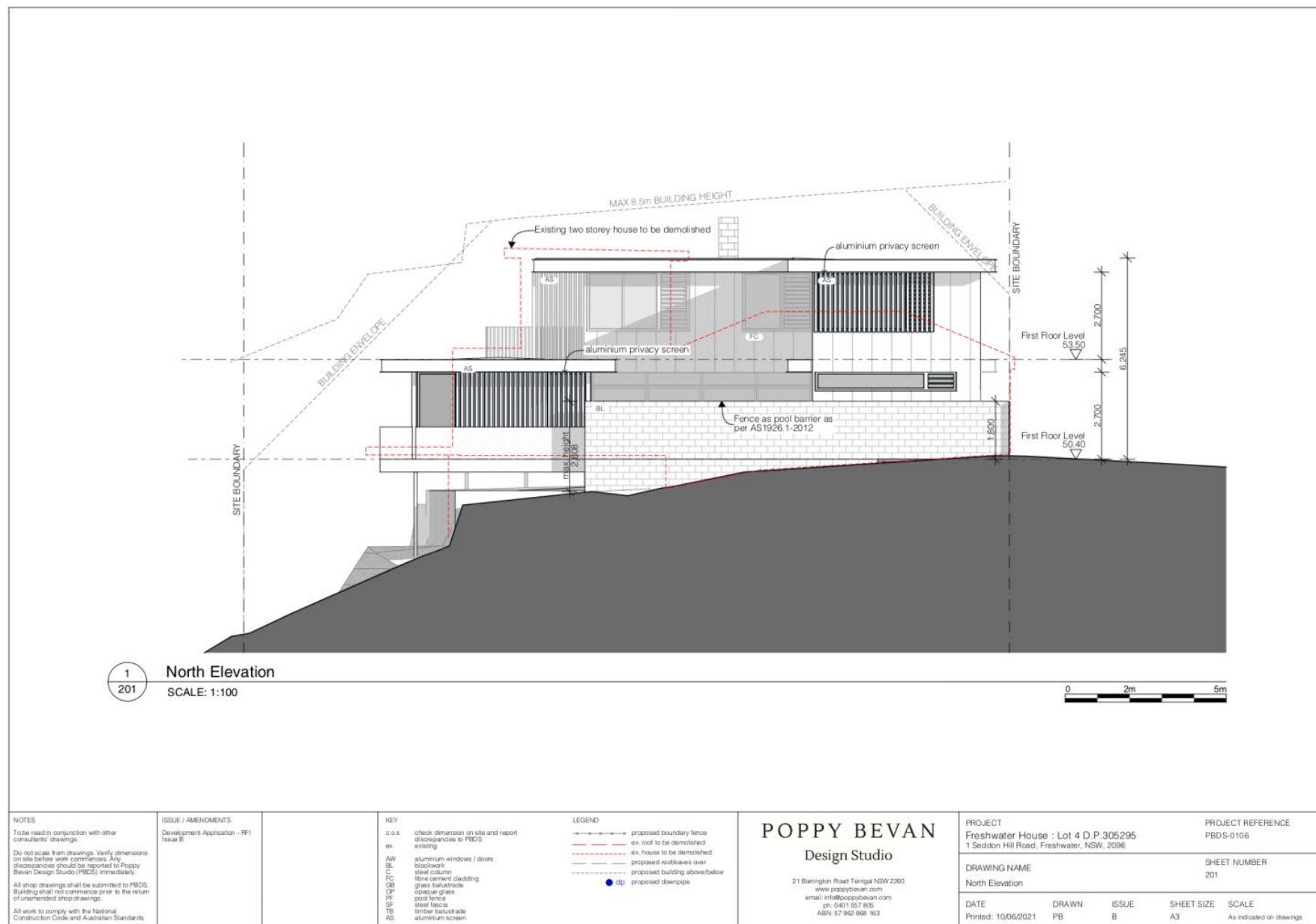
35. **Undesirable Trees**

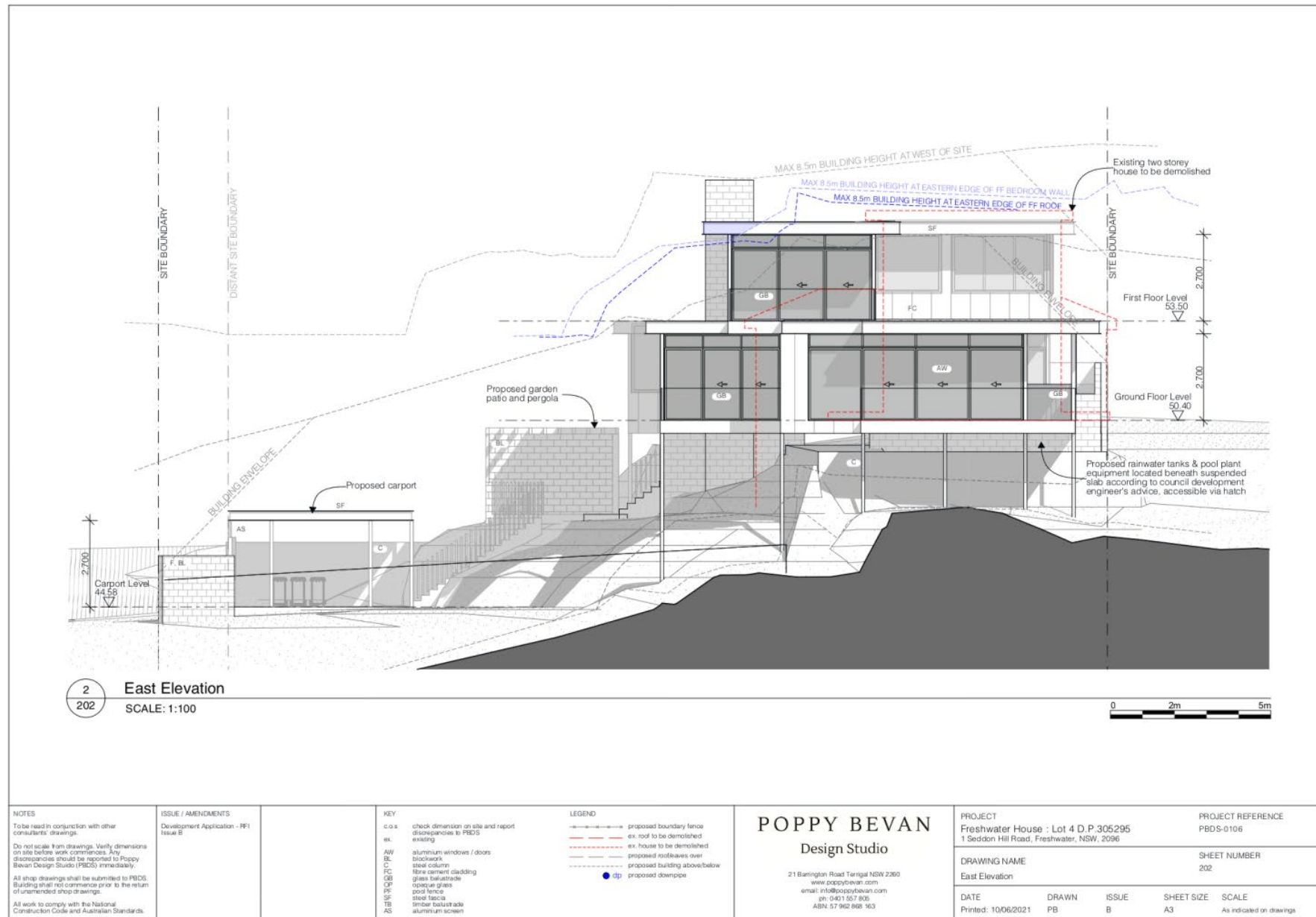
Leighton Green Cypress *Cupressocyparis leylandii* or any of its cultivars, or any other Undesirable Trees identified by Council, must not be planted on the site for the life of the development.

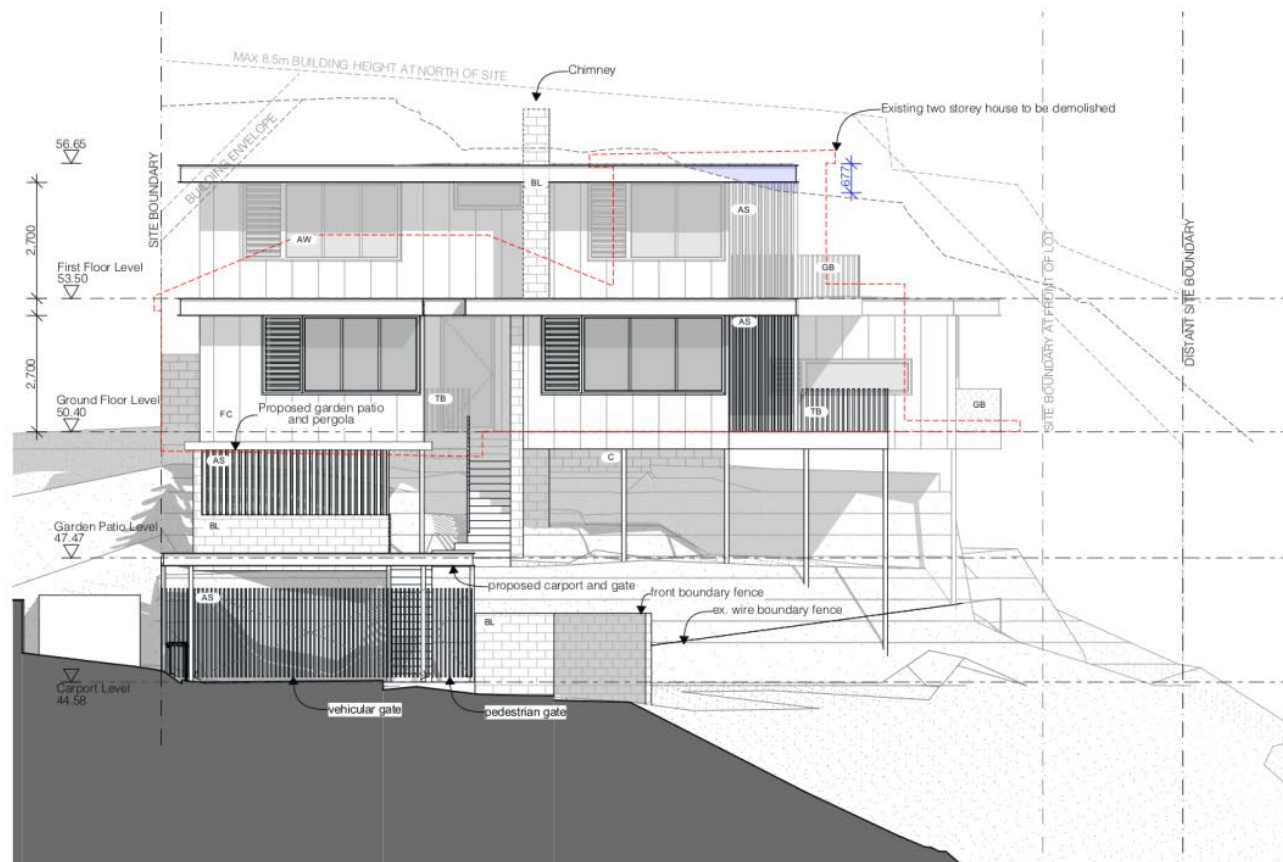
In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views and loss of plant diversity.

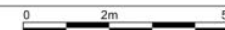




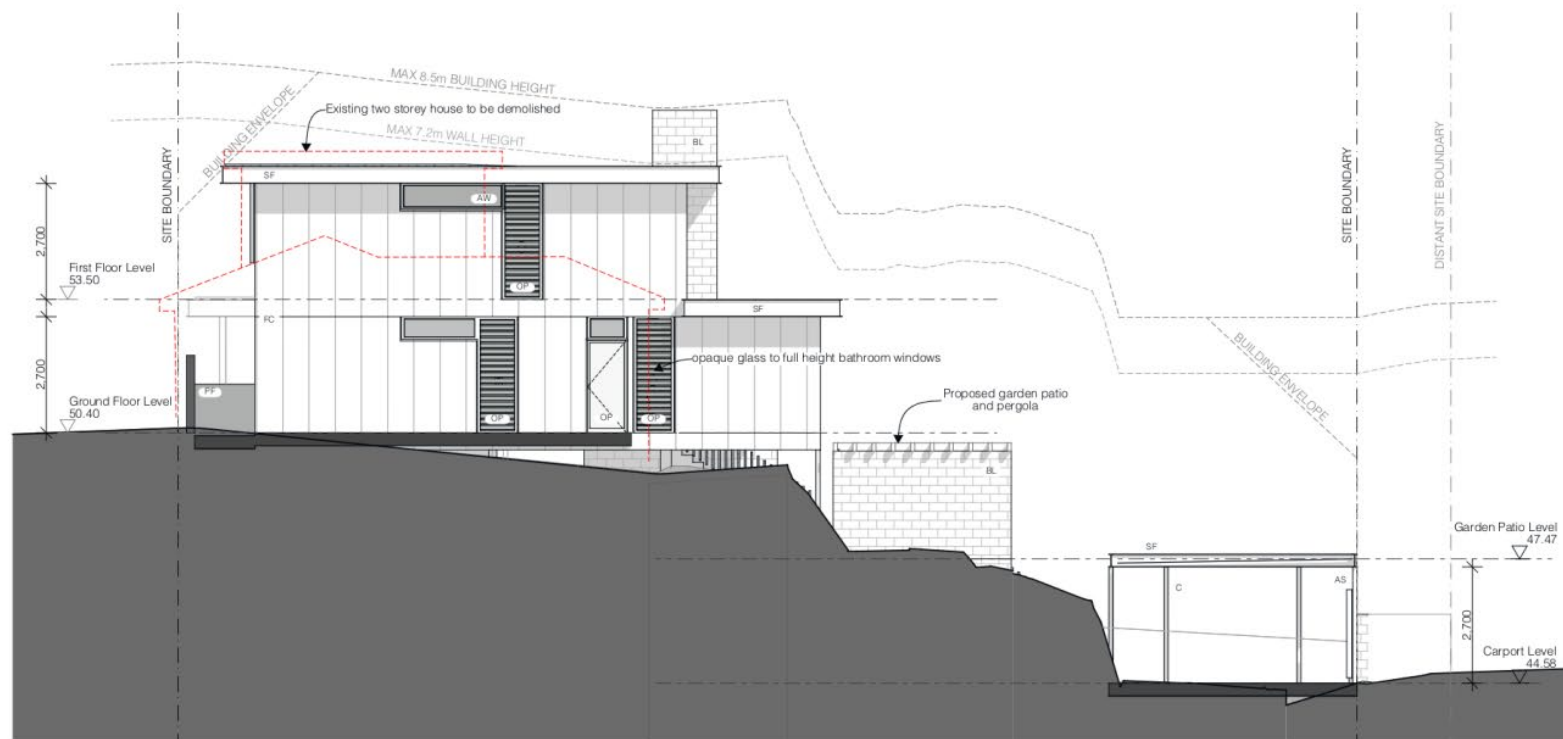




1
203 South (Street) Elevation
SCALE: 1:100



<p>NOTES</p> <p>To be read in conjunction with other consultants' drawings.</p> <p>Do not scale from drawings. Verify dimensions on site before work commences. Any discrepancies should be reported to Poppy Bevan Design Studio (PBDS) immediately.</p> <p>All shop drawings shall be submitted to PBDS. Building shall not commence prior to the return of unamended shop drawings.</p> <p>All work to comply with the National Construction Code and Australian Standards.</p>	<p>ISSUE / AMENDMENTS</p> <p>Development Application - PF1 Issue B</p>	<p>KEY</p> <p>c.o.s. check dimension on site and report discrepancies to PBDS</p> <p>ex. existing</p> <p>AW aluminium windows / doors</p> <p>BL blockwork</p> <p>C steel column</p> <p>FC fibre cement cladding</p> <p>GB green balustrade</p> <p>OP opaque glass</p> <p>PF post fence</p> <p>SF steel fascia</p> <p>TB timber balustrade</p> <p>AS aluminium screen</p>	<p>LEGEND</p> <p>--- proposed boundary fence</p> <p>--- ex. roof to be demolished</p> <p>--- ex. house to be demolished</p> <p>--- proposed roof/leaves over</p> <p>--- proposed building above/below</p> <p>• d.p. proposed downpipe</p>	<p>POPPY BEVAN Design Studio</p> <p>21 Barrington Road Terrigal NSW 2360 www.poppysbevan.com email: info@poppysbevan.com ph: 0401 557 805 ABN: 57 962 868 163</p>	<p>PROJECT Freshwater House : Lot 4 D.P.305295 1 Seddon Hill Road, Freshwater, NSW, 2096</p> <p>PROJECT REFERENCE PBDS-0106</p> <p>DRAWING NAME South Elevation</p> <p>SHEET NUMBER 203</p> <p>DATE Printed: 10/06/2021</p> <p>DRAWN PB</p> <p>ISSUE B</p> <p>SHEET SIZE A3</p> <p>SCALE As indicated on drawings</p>
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1
204 **West Elevation**
SCALE: 1:100

<p>NOTES</p> <p>To be read in conjunction with other consultants' drawings.</p> <p>Do not scale from drawings. Verify dimensions on site before work commences. Any discrepancies should be reported to Poppy Bevan Design Studio (PBDS) immediately.</p> <p>All shop drawings shall be submitted to PBDS. Building shall not commence prior to the return of unamended shop drawings.</p> <p>All work to comply with the National Construction Code and Australian Standards.</p>	<p>ISSUE / AMENDMENTS</p> <p>Development Application - PF1 Issue B</p>	<p>KEY</p> <p>c.o.s. check dimension on site and report discrepancies to PBDS existing</p> <p>ex. existing</p> <p>AW aluminium windows / doors</p> <p>BL blockwork</p> <p>C steel column</p> <p>FC fibre cement cladding</p> <p>GB green balustrade</p> <p>OP opaque glass</p> <p>PF post fence</p> <p>SF steel fascia</p> <p>TB timber balustrade</p> <p>AS aluminium screen</p>	<p>LEGEND</p> <p>--- proposed boundary fence</p> <p>--- ex. roof to be demolished</p> <p>--- ex. house to be demolished</p> <p>--- proposed roof/leaves over</p> <p>--- proposed building above/below</p> <p>• d.p. proposed downpipe</p>	<p>POPPY BEVAN Design Studio</p> <p>21 Barrington Road Terrigal NSW 2260 www.poppysbevan.com email: info@poppysbevan.com ph: 0401 557 805 ABN: 57 962 868 163</p>	<p>PROJECT Freshwater House : Lot 4 D.P.305295 1 Seddon Hill Road, Freshwater, NSW, 2096</p> <p>PROJECT REFERENCE PBDS-0106</p> <p>DRAWING NAME West Elevation</p> <p>SHEET NUMBER 204</p> <p>DATE Printed: 10/06/2021</p> <p>DRAWN PB</p> <p>ISSUE B</p> <p>SHEET SIZE A3</p> <p>SCALE As indicated on drawings</p>
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1 Seddon Hill Road, Freshwater

Clause 4.6 Exceptions to Development Standards – Height of Buildings

10 June 2021

Clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP 2011) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* being:

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

The aims and objectives of Warringah LEP 2011 Clause 4.6 are as follows:

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



Under Clause 4.6(3) and (4) of the WLEP 2011, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

It is of interest that the consent authority specifies a number of development standards that cannot be varied under Clause 4.6, listed in Clause 4.6(8). Clause 4.3 - Height of buildings is not one of the standards excluded, it must therefore be assumed that the standard for height of buildings, is one of the development standards that can have an appropriate degree of flexibility applied under clause 4.6.

1. Environmental Planning Instrument Details (Warringah LEP 2011)

1.1 What is the name of the environmental planning instrument that applies to the land?

Warringah Local Environmental Plan 2011 (WLEP 2011)

1.2 What is the zoning of the land?

R2 – Low Density Residential

1.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

1.4 What is the development standard being varied?

Cl 4.3 of the Warringah Local Environmental Plan 2011, Height of Buildings

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.3 of the Warringah Local Environmental Plan 2011

1.6 What are the objectives of the development standard?

- (1) The objectives of this clause are as follows:*
- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
 - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
 - (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
 - (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

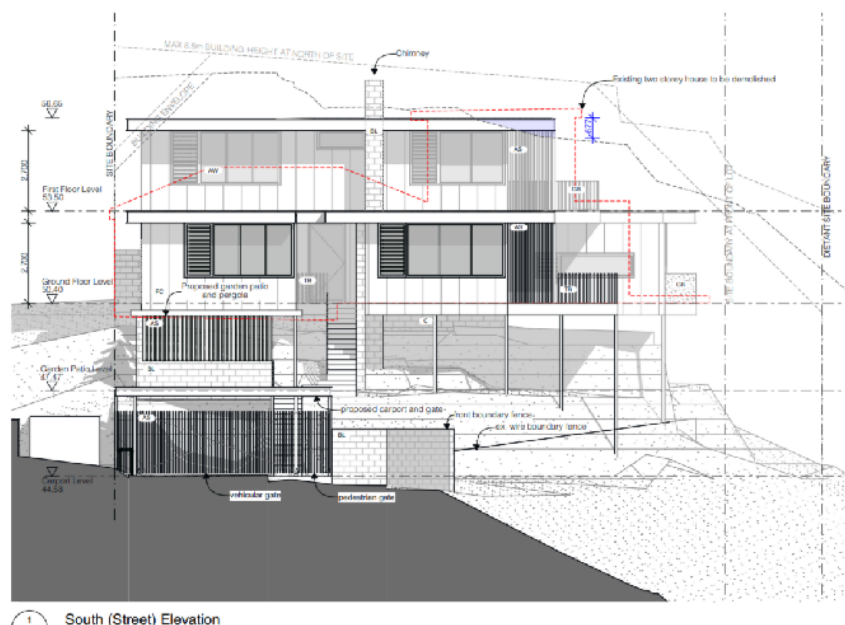
1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

1.8 What is proposed numeric value of the development standard in your development application?

The numeric value of the development standard in this development application is a maximum of 9.17m.

We note that this height exceedance is due to varying topography of the site and is for a very limited portion on the south-eastern corner of the balcony roof. The vast majority of the dwelling sits below the 8.5 metre height. See extract from plans below.





building height (or **height of building**) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
 - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,
- including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 7.96%

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*



In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

2.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

2.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. *The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;*
2. *The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and*
3. *The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are*



sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

3. Consideration

The following section addresses the provisions of clause 4.6 of the WLEP 2011 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered.

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - *Wehbe v Pittwater*

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).

The objectives of the standard are:

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

The proposed development will present with a dwelling of compatible scale to neighbouring development. It is a modest and aesthetically pleasing dwelling and has been designed to retain and enhance the character of the streetscape and dwelling. The height noncompliance results only from the fall of the land at the location of the upper-level balcony and the vast extent of the dwelling will sit within the 8.5 metre limit. The height is compliant at the street frontage and the small area of departure is open being a balcony area which does not add to bulk and allows for views through the space.

(b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*



The variation is for a very limited area, being only the roofed balcony in the south eastern corner of the site. The impacts of the height of the proposal will not be to the detriment of neighbours with compliant solar access retained, a high level of privacy continued and no loss of significant views for neighbours with the maximum dwelling RL maintained at that of the existing dwelling.

The orientation of the land and the fall of the site aid in ensuring that the impacts are further reduced for neighbours with the overall development proposal being a positive addition to the streetscape and the site.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

The proposed dwelling will result in significant improvement to the site's contribution to the character of the area. The existing street view will be enhanced by the architectural integrity of new structure. Colours and materials have been chosen to complement the scenic coastal location and there will be no adverse impacts as a result of the small area where there is a breach in height.

(d) (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The proposed development will be a positive addition when viewed from public places including Seddon Hill Road. The scale of the development is similar to the surrounds in which it sits and has been well designed to traverse a difficult site. The minor breach to the height for the open structure, will not be easily visible with the orientation of the land and the fall of the site aiding in ensuring a positive addition to the streetscape and the public domain.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.

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

This exception to development standards request does not rely on this reason.

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



This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

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

In particular:

Detail of Variation

- The apparent bulk through the variation is negligible, consistent with neighbours and is not to the detriment of the scale of the dwelling from any point satisfying Cl1.3(g).
- The variation to the height occurs at a small portion of the site, in the corner to allow for a partly covered deck. It allows for the upper-level deck to have some weather protection to allowing a shading device over the open balcony. The impact of this allows for amenity, whilst also ensuring an open structure which does not result in excessive height or bulk satisfying Cl1.3(g).

As the site slopes, at the south-eastern corner there is a breach, but for the majority of the first-floor length, the height is well under the height limit. This design allows for the amenity in the dwelling house to be achieved, providing liveable accommodation. The breach is required in this instance to achieve residential amenity and weather protection, and compliance with the development standard would be unreasonable.

Neighbour Amenity

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The variation in height will have no real impact on neighbours, being in the south eastern corner of the site, where the siting and topography results in significant distance to any neighbouring dwelling.
- Compliance with the height control at the corner of this balcony would not result in a building which has a significantly lesser bulk and the impact to neighbours of compliance would be barely discernible as the variation is for such a small component and does not present a large



bulky structure. Accordingly, compliance with the development standard in this instance is unreasonable.

- Solar access impacts as a result of the small height variation are negligible. The plans demonstrate that a fully compliant development could result in a greater impact. Accordingly, compliance with the development standard based on this would be unreasonable.
- The small variation to the height it is not to the detriment of views.

Site Constraints

- The final design including the variation to the height at the south eastern corner, is a result of the existing site constraints and topography. It would be unreasonable to require compliance with the development standard, when the variation result allows for a lesser RL to the existing dwelling and the orderly and economic use of the site and allows for an ecologically sustainable development revitalising an existing underdeveloped site satisfying Cl1.3(g) and (f).

Design and Streetscape Appeal

- Strict numerical compliance with the height control would not result in a better urban design outcomes. Compliance with the development standard based on this would be unreasonable.
- The proposed development will not present with excessive bulk from the public domain with the sloping topography of the site resulting in the variation consistent with development and form in the immediate streetscape satisfying Cl1.3(g). The streetscape appeal is unaffected by the variation to the height standard, and it would be unreasonable to require compliance with development standard based on this.

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest as the proposal provides a dwelling with streetscape appeal. It remains consistent with the objectives of the zone ensuring that appropriate and reasonable housing suitable for the local community is proposed. Compliance with the development standard based on this would be unreasonable.

Natural Environment

- The inclusion of the height variation to facilitate a covered balcony has no impact on the natural environment. The variation sits within the existing building footprint and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the minor varied roof form and height satisfying Cl1.3(b). The natural environment is unaffected by the small departure to the development standard and it would be unreasonable for the development to be refused on this basis.

**Environmentally Sustainable Development**

- The proposal represents an environmentally sustainable design fulfilling Cl1.3(f). Compliance with the development standard based on this would be unreasonable.

Social and economic welfare

- The small variation to the height as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.
- The small variation to the height as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.
- The variation does not result in a roof form or height beyond that which is found in the immediate context, including the immediately neighbouring sites. The maximum RL of the varied portion of the roof sits below the existing first floor RL. The small variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.
- Removal of the non-compliance would not result in alter the perceived bulk and scale due to the minor nature, siting and topography.

The variation is confined to one small corner of the roof. The discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and retention of amenity. These are not simply benefits of the development as a whole, but are a direct result of the breach of the maximum height control.

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



3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

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

Consistent. The proposal is for a residential dwelling.

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

Not relevant. The proposal is for a residential dwelling.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Consistent. The proposal is for a single dwelling house with the proposed development resulting in a proposal which is to the benefit of the character of the area. The existing street view will be improved by the design elements which have been created to complement the natural environment of Warringah and Freshwater.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effect as the variation is limited area and restricted to an open balcony structure. The development will present to the street and neighbours as a positive addition, complementary to the locality and its character.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

3.4 Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

3.5 Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

**3.6 Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Strict compliance with the 8.5 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, protecting the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats and promoting good design and amenity of the built environment.*

The proposed development is for a single residential dwelling, on land zoned R2 – Low Density Residential.

The new dwelling retains the maximum RL of the existing dwelling and will not present as greater in scale than any surrounding buildings.



The variation is due to a dramatic fall in the topography on the site.

The area of variation does not adjoin neighbouring dwellings due to the siting and topography of the land.

The area of variation will be of negligible impact to neighbours being limited in area and primarily and consisting of an open balcony structure.

The architectural merit of the design is high and it would be of vast benefit the site, neighbours and locality to allow for this contemporary and thoughtful design.

There are no discernible solar access impacts with the shadow falling to the street.

There are no neighbouring amenity or view loss impacts given that the area of the height variation is an open balcony structure that is the same level as the existing dwelling, as well as the compliant main roof line of the new dwelling.

The location of the variation is to the detriment of no neighbour or the streetscape. The development fulfils the objectives of the height controls and the zone and is therefore considered reasonable and appropriate as proposed.