

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 13 OCTOBER 2021



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 13 October 2021

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 29 SEPTEMBER 2021

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 29 September 2021 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2021/1356 - 105 ARTHUR STREET, FORESTVILLE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE.
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2021/695827
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 DA2021/1356 for alterations and additions to a dwelling house on land at Lot 2 DP 112668, 105 Arthur Street, Forestville, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1356
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 2 DP 112668, 105 Arthur Street FORESTVILLE NSW 2087
Proposed Development:	Alterations and additions to a Dwelling House
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gerhardus Johannes Potgieter Alicia Michelle Potgieter
Applicant:	Gerhardus Johannes Potgieter
Application Lodged:	11/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/08/2021 to 02/09/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 14%
Recommendation:	Approval
Estimated Cost of Works:	\$ 151,000.00

Executive Summary

The proposal is an addition to the existing upper floor of the dwelling house on the subject site.

The proposal does not comply with the building height development standard of 8.5m (up to 9.69m) under the WLEP and results in a 14% variation to the control thus is required to be determined by the Development Determination Panel (DDP).

The proposed development was notified and no submissions were received.

The application is recommended for approval subject to conditions.



PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the additions to the upper storey of the dwelling house.

The works include the following:

First Floor

- Extension to Bedroom 1.
- Addition of an en-suite.
- New window opening to the northern elevation.
- New window and door opening to the southern elevation.
- New deck area and privacy screen at the rear (southern elevation) servicing the master bedroom.

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 - B3 Side Boundary Envelope
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 2 DP 112668 , 105 Arthur Street FORESTVILLE NSW 2087
Detailed Site Description:	The subject site is legally identified Lot 2 DP 112668 and

known as 105 Arthur Street Forestville. The site is located within the R2 Low Density Residential zone as mapped within the Warringah Local Environment Plan 2011.

The subject site is rectangular in shape with a total area of 819.6 m². The site has a width of 20.370 metres to Arthur Street and a depth of 40.235 metres.

The property has a steep fall from a high point of RL 102.1m AHD at Arthur Street to a low point of RL 93.46 m AHD at the rear of the property.

The site currently does not contain any significant environmental features or canopy trees. The subject site is mapped within the Northern Beaches Council Bush Fire zone map due to the close proximity of the site to the Garigal National Park.

The existing site consists of a three storey dwelling house, with a swimming pool.

Surrounding sites consist of multi level dwelling houses, of varying ages, within a landscaped setting.

Map:



SITE HISTORY

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

- Development Application **DA2010/0411** for the demolition works, construction of a new dwelling house, swimming pool and retaining walls was approved by Council on 12 May 2010.



Pre-lodgement Meeting **PLM2010/0005** was held on the 18 February 2010 to discuss the proposal for the demolition of the existing dwelling, construction of a new dwelling house and tree removal. The notes documented that the proposal would be generally considered acceptable subject to the minor changes to the building height, building envelope and landscaping as discussed at the meeting and provided in the notes.

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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Bushfire Planning Services, dated 26 July 2021). The report stated that the highest amount of radiant heat that the new works would be an appropriate BAL rating of BAL-29 to all exposed aspects. The report states "calculations and assumptions outlined in this report show that the development will be required to comply with the construction requirements of AS 3959-2018 BAL-29 on its exposed northern and western aspects, and BAL-19 on the southern and eastern aspects and any additional construction requirements contained within section 7.5, 7.5.1, 7.5.2, 7.5.3, 7.5.4 (where applicable) of the Rural Fire Services document Planning for Bushfire Protection 2019".

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report ,



along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/08/2021 to 02/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. A response was received by Council on the 16 August 2021 stating no decision was required. As a result no objections are raised and no conditions are recommended.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The New South Wales Rural Fire Service (NSW RFS) has provided a response on the 30 August 2021. The NSW RFS has no objections to the proposal subject to conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A424233 dated 16 July 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A424233 dated 16 July 2021).



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

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

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. A response was received by Council on the 16 August 2021 stating no decision was required. As a result no objections are raised and no conditions are recommended.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.89m (RL 108.09) - 9.69m (RL 107.54)	14%	No

Compliance Assessment

Clause	Compliance with Requirements
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Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	
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:	9.96m
Percentage variation to requirement:	14%

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 applicants written request states:

- *"The subject additional works are only non-compliant by virtue of the fact that the subfloor area has been reconfigured in terms of the ground levels to this area and as such result in a potential interpretation of the height control being breached.*
- *Compliance with the development standards is unreasonable and unnecessary as the proposal entirely consistent with the existing upper-level built form.*
- *The proposed new dwelling is of a similar bulk and scale as the existing dwelling on the site and within a similar location.*
- *The subject proposal is entirely compatible with the height and scale of surrounding and nearby development.*
- *The proposal by virtue of its minimal contribution to building bulk does not materially impact upon views, privacy or solar access."*

Therefore the applicants written request argues, in part:

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

In the circumstances of the steep site conditions variation of the development standard of 8.5m, while continuing to allow for a dwelling house that limits the excavation of the site to protect significant environmental rock outcrops, is not considered unreasonable.

The overall height of the development on the site is to be increased due to the new parapet from RL107.99 to RL108.9, however this building height difference and visual impact will not be redibly



identifiable from the streetscape and surrounding sites.

It is agreed that the breach is largely unavoidable due to the considerable slope of the land and that the non-compliance will not result in any unreasonable impacts to any surrounding properties.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the 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 development is for an addition to the existing First Floor with a flat style roof. Whilst there is no increase to the previously approved roofline of 9.69m, there is a very minor increase in the overall building height the proposed dwelling house from from RL107.99 to RL108.09 (increase of 0.1m) due to the new parapet roof form. This flat style roof design continues to assists to minimises the overall height of the development. See Figure 1 below.

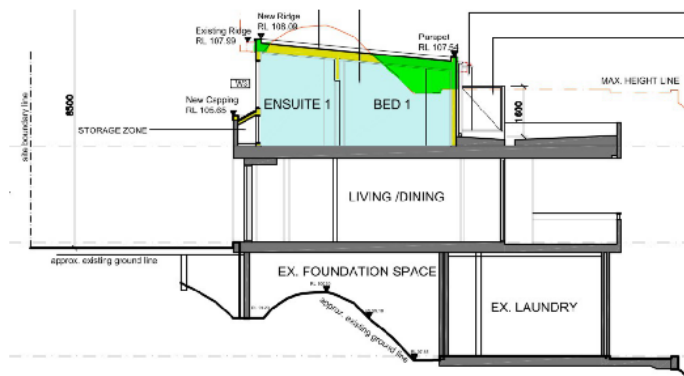


Figure 1. Shows the minimal change to the building height and bulk and scale of the proposed development (in black outline), when compared to the existing dwelling house (in red outline). The height variation is shown in green.

The proposals building height and flat roof design continues to reflect the established built form character of the immediate Arthur Street area where multi-level, and non-complying building heights are prevalent due to the steep topography of the land along this immediate area.

The additional non-compliance is considered to be relatively minor, with the additional area of non-compliance not unreasonably conflicting with the height and scale of newer surrounding and nearby development. In this context, the proposed height non-compliance is considered to be compatible.

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

The development satisfies this objective.

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

Comment:

The building height non-compliance is located at the northern and southern edge of the roofline and along the wall plane of the first floor, with the noncompliance being relatively minor in size.

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

The proposal is appropriately designed to maintain the privacy of the subject site and adjoining properties with the two additional window openings on the western elevation displaying opaque glazing, and privacy screening proposed along the western elevation for the small balcony area.

The bulk and scale of the proposed development will continue to be a similar representation of the existing three (3) storey development when viewed from property to the west, and a two (2) storey development when viewed from Arthur Street as demonstrated in Figure 2 and 3 below. There will be no visual change when viewed from the property to the east.



Figure 2: Presentation of the new addition to the streetscape (north elevation).

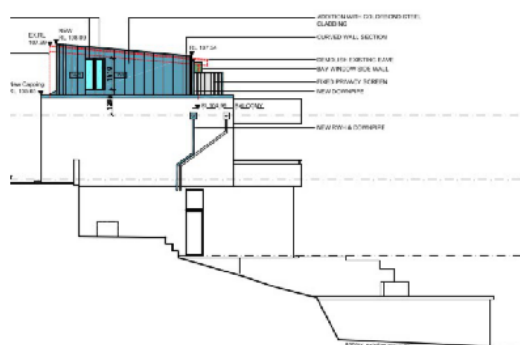


Figure 3: Presentation of the new addition to the western neighbouring site.

The application includes shadow diagrams which are certified by the architect (see Plan No. GA.06 V.A dated May 2021 as prepared by Leung Architects). The diagrams indicate that the development will not cast any unreasonable shadow over the neighbouring property to the east (No.103 Arthur Street) or west (No. 107 Arthur Street) between 9.00am and 12.30pm on 21 June.

Therefore, privacy, amenity and solar access are provided for within the proposed development, with the proposed development displaying a negligible impact on surrounding residences.

The development satisfies this objective.

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

Comment:

Despite the topographical constraints of the site, the developments design provides reasonable articulation, and visual interest and the additional first floor area floor is sufficiently setback from the boundaries such that the visual impact of the additional area of the building will be appropriately managed.

All previously approved landscaping is to be retained, and will continue to soften and filter the new built form. Therefore, the amended proposal will be sufficiently integrated into the existing landscaped setting and contribute to the scenic quality of the bush environment.

The development satisfies 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:



The proposal is designed to maintain the topographical features of the site by providing additional footprint to the first floor rather than excavating into the site. The proposals curved design with high quality external finishes and open style balcony areas, provides a articulated look when viewed from neighbouring properties.

The proposal reflects the established built form character of the immediate Arthur Street area where multi-level, variable stepped houses are prevalent, due to the steep topography of the land.

The extensive existing landscaping has been retained and will soften and filter the built form.

As such, the minor non-compliance and the similarity of the bulk and scale to the existing dwelling house, does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height is considered to be compatible and not cause any unreasonable visual impact when viewed from public places.

The development satisfies this objective.

Zone objectives

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

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

Comment:

The proposal maintains the use of the site as a dwelling house, continuing to contribute to the housing needs within a low density environment.

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:

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 proposal will be a low-impact development and has been designed to respond sensitively to the steep topography. The dwelling house will provide the occupants an increased level of amenity without causing unreasonable impacts to adjoining neighbours or to the site itself. The development does not result in any adverse impact on native trees, retains existing landscaping, whilst continuing to demonstrate compliant landscaped area as required by the Warringah DCP 2011.

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 PS20-002 dated 5 May 2020, 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, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.6m - 9.8m	up to 36%	No
B3 Side Boundary Envelope	4m West	Encroachment from 0.5m - 1.4m	35%	No
B5 Side Boundary Setbacks	0.9m West	2.16m - 4.4m	-	Yes
B7 Front Boundary Setbacks	6.5m	7.2m	-	Yes
B9 Rear Boundary Setbacks	6m	26.4m Dwelling 25.0m Balcony	- -	Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	42.37% (347.329 m ²)*	-	Yes

* No change to existing LS provision.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
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

Description of non-compliance

Part B1 of the WDCP 2011 prescribes a 7.2m high wall height control for singular planar elements of a dwelling. The proposal breaches the wall height control by up to 36% to a total height of 6.6m - 9.8m above existing ground level.

Merit consideration:

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

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

Comment:

The general intent of the wall height control is to limit the proportions of large planar elevations of a house that could be overly visually dominant and bulky. Such is not the case with this



proposal where the curved facade is highly modulated and recessed inwards from the floor below. The proposal presents as a well designed home and, when compared to the proportions of neighbouring properties, does not have any excessive visual impact significantly over and above other buildings.

In the circumstances of the application, it is considered that the development satisfies this objective.

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

Comment:

There are no significant trees on the site. However, the surrounding land has scattered mature trees within the landscaped areas of houses and along the street with the tree canopy generally being higher than most houses.

The proposed site layout maintains sufficient deep soil landscaping zones that would be capable of accommodating trees and other vegetation that could grow to a height equal to or greater than the house itself.

Accordingly, the proposal satisfies the objective.

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

Comment:

The proposal has not been found to result in any unreasonable impacts upon the provision of views enjoyed by surrounding properties.

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

Comment:

The non-complying sections of wall are influenced by the existing natural ground level of the site and slope.

The proposal has been found to have an acceptable impact on neighbours. The portion of the building which exceeds the wall height control is located to the rear of the first floor and does not cause any impact than what previously exists. No unreasonable amenity, overshadowing, or building bulk impacts will result from the non-compliant wall height with regard to adjoining properties. The submitted shadow diagrams demonstrate compliance for 21 June, 9am to 3pm period for adjacent private open space.

It is therefore considered that the development satisfies this objective.

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

Comment:



The proposal is for a first floor addition wholly atop of the existing building and does not modify the topography of the site. Accordingly, the development satisfies this objective.

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

Comment:

The proposal has a flat roof which is sympathetic to the design of the house, and contributes to lessening impacts upon neighbouring properties.

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.

B3 Side Boundary Envelope

Description of non-compliance

Part B3 of the WDCP 2011 prescribes a 4m building envelope to the elevations of a house. To the western elevation of the subject dwelling, the first floor extension encroaches this envelope for the entire depth of the building at a height between 0.5m - 1.4m, see Figure 4 below.

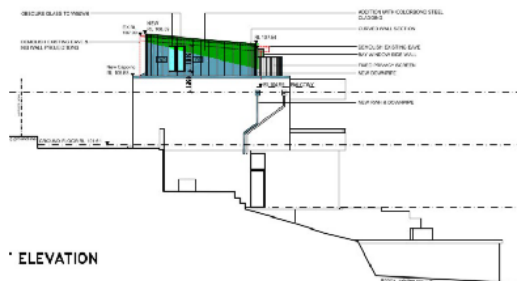


Figure 4: Western side boundary envelope non-compliance shown in green.

Merit consideration

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

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

Comment:

The proposed development generally complies with the built form controls prescribed by Part B of the WDCP 2011, with the exception of the wall height and envelope breach on the western elevation. Given the general compliance of the development, which in part exceeds all setback requirements, and given the modest scale of the first floor addition and the complementary architecture proposed, it is not considered that the development will be of a visually dominant height and bulk than what currently exists. See Photo 1 below.



Photo 1: Existing street view of the dwelling house.

The overall architecture of the development is articulated in a manner that is consistent with the general typology of buildings in the immediate vicinity, thereby negating any impact of the variation sought, and ensuring compatibility with surrounding developments by virtue of height and bulk.

In the circumstances of the application, it is considered that the development satisfies this objective.

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

Comment:

The development has been designed in a manner that does not unreasonably nor detrimentally overshadow nor overlook adjoining and nearby properties. Adequate spatial separation is proposed between the proposed works and western neighbouring buildings, see Photo 2 below.



Photo 2: Relationship to the western adjoining dwelling house.

The minor first floor extension has not been found to result in any unreasonable amenity impacts to neighbouring properties, and provides a significant improvement to the amenity of occupiers of the subject dwelling both through natural light and increased space.

Accordingly, the development satisfies this objective.

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

Comment:

The proposal does not seek to modify the existing topography of the site. The first floor addition is stepped back with a curved design from the level below, where appropriate, to ensure that the building does not present as a bulky structure. Accordingly, the development satisfies this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

D8 Privacy

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy*



for occupants and neighbours.

Comment:

The proposed first floor addition window and door openings are designed in a manner that minimises overlooking into adjoining properties to a degree that is considered appropriate within the context of an R2 zone.

The two (2) new windows on the western elevation (W5 & W6) service an ensuite and are to be of opaque glazing. The opaque glazing ensures the existing privacy and amenity between the subject dwelling and the western neighbouring dwelling house is maintained.

The additional window, door openings and balcony area servicing the master bedroom on the southern elevation are orientated towards the south and located over 25m from the rear boundary. A privacy screen is proposed for the western elevation to ensure existing privacy and amenity levels are maintained. No privacy screen is located for the eastern elevation, however the balcony is located over 9m from the eastern boundary and due to the minor size and intended use, a privacy screen is not required to maintain reasonable levels of amenity.

The proposal strikes an appropriate balance between areas of privacy and the obtainment of district views, both for occupants of the proposed dwelling and adjoining dwellings, and it is noted that no submissions have been raised from either adjoining property owner in this regard.

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

Comment:

The proposal maintains reasonable privacy levels to adjacent land. The use of opaque glazing to window openings W5 & W6 on the western elevation addresses the direct overlooking from these windows, combined with the privacy screen for the rear balcony that will minimise direct outlook toward the west and south-west. Therefore, the inclusion of opaque glazing and privacy screening has partly addressed amenity concerns to ensure design solutions to improve the urban environment.

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

Comment:

The proposal has appropriate design for personal and property security for a low density residential environment.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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



POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$ 755 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 151,000.

CONCLUSION

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

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

This report provides a detailed assessment of the Development Application for minor additions to a



dwelling house at 105 Arthur Street Forestville.

Public Exhibition

The public exhibition of the application resulted in no submissions.

Assessment of the Proposal

The assessment of the proposed development against the provisions of WLEP 2011 found that the proposal does not comply with the 'Height of Buildings' Development Standard under the WLEP 2011 which permits a maximum building height of 8.5m within the R2 Low Density zone.

In this case, the non-compliance is located at the north and south of the roofline and wall plane of the first floor level. Whilst the building height variation is significant, the non-compliance is largely unavoidable due to the steep slope of the site.

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

In addition, the assessment of the proposed development against the provisions of the Warringah DCP 2011 has found that the proposal does not comply with a number of controls, i.e wall height, side boundary envelope. Given the constraints on the development by virtue of the sloping topography some flexibility in applying these controls is necessary.

There will not be any unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the vegetated character of Arthur Street and the Forestville area.

Recommendation - Approval

In summary, the proposal is recommended for approval as the siting and design of the dwelling house additions are site responsive and logical and will not result in any unreasonable amenity impacts on surrounding developments or the streetscape character.

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 DA2021/1356 for Alterations and additions to a Dwelling House on land at Lot 2 DP 112668, 105 Arthur Street, FORESTVILLE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition



of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan and Roof Analysis GA.01	May 2021	Leung Architects
Floor Plans GA.03	May 2021	Leung Architects
Elevations GA.04	May 2021	Leung Architects
Sections GA.05	May 2021	Leung Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Landslip Risk Assessment	23 July 2021	Crozier Geotechnical Consultants
Bushfire Risk Assessment	26 July 2021	Bushfire Planning Services

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

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

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

2. **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 \$755.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$151,000.00.

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



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

The Northern Beaches Section 7.12 Contributions Plan 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 \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. **Stormwater Drainage Disposal**

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

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

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



Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

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

Reason: To ensure satisfactory management of stormwater.

7. Compliance with Standards

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

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

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

8. Waste Management Plan

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

9. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

10. 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.

11. Waste Management During Development

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



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

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

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

12. Stormwater Drainage Disposal Certification

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Rodney Piggott, Manager Development Assessments

The application is determined on //, under the delegated authority of:



Rodney Piggott, Manager Development Assessments





CLAUSE 4.6 – VARIATION REQUEST
TO
MAXIMUM HEIGHT OF BUILDINGS
DEVELOPMENT STANDARD
UNDER CLAUSE 4.3 OF WARRINGAH LOCAL
ENVIRONMENTAL PLAN 2011
FOR
ALTERATIONS AND ADDITIONS
TO EXISTING DWELLING
AT
105 ARTHUR STREET FORESTVILLE

LANCE DOYLE
B.AppSc (UWS), M.Plan (UTS), RPIA, EPLA
REGISTERED PLANNER
DOYLE CONSULTING GROUP

Clause 4.6 – Exception to a Development Standard-Building Height
105 Arthur Street Forestville

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Clause 4.6 – Exception to a Development Standard-Building Height
105 Arthur Street Forestville

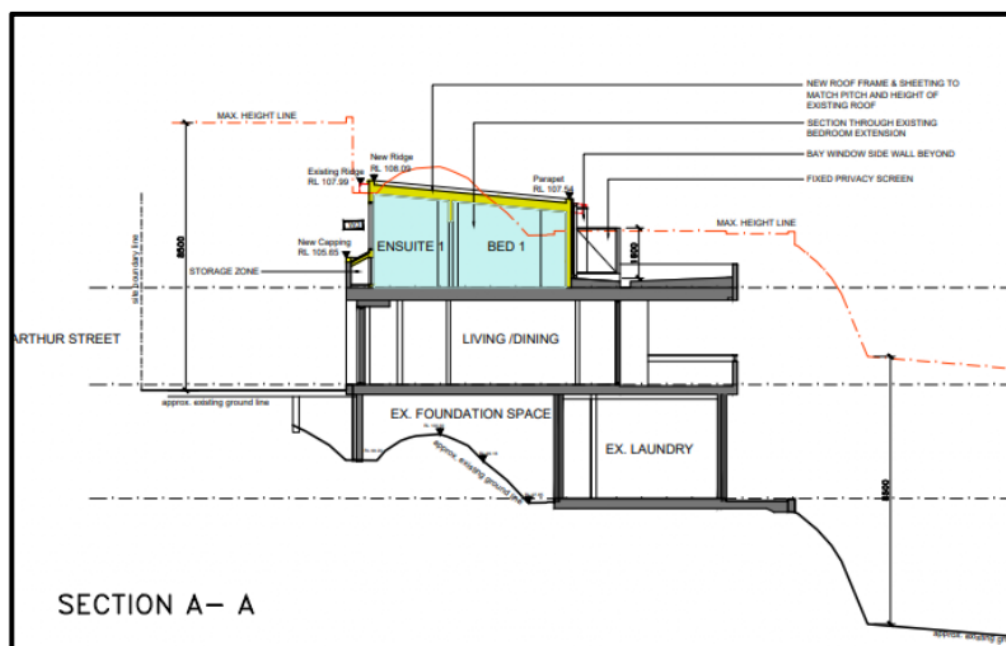
CLAUSE 4.6 – EXCEPTION TO A DEVELOPMENT STANDARD IN RELATION TO CLAUSE 4.3(2) MAXIMUM BUILDING HEIGHT OF THE WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

1.0 INTRODUCTION

This written request is made pursuant to the provisions of Clause 4.3(2) of the Warringah Local Environmental Plan 2011 for alterations and additions to the existing dwelling at 105 Arthur Street Forestville.

The purpose of clause 4.6 is to allow the consent authority to consider a proposal that, for a variety of reasons does not comply with the 8.5 m height control which is regarded as a development standard.

The subject proposal is breaching the maximum 8.5 m height development standard due to an excavated area within the foundation area of the existing dwelling. This clause 4.6 request is submitted to Council for abundant caution as it is not clear from Council's controls whether the proposal is compliant with this control or not.



Clause 4.6 – Exception to a Development Standard-Building Height
105 Arthur Street Forestville

As can be readily understood from the above section through the proposal, the alterations and additions are compliant in part and non-compliant in part and therefore the clause 4.6 request is submitted for Councils consideration.

Clause 4.6 – Exceptions to Development Standards

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.
- (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.
- (5) In deciding whether to grant concurrence, the Secretary must consider:

Clause 4.6 – Exception to a Development Standard-Building Height
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- (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 Secretary before granting concurrence.

(6) Development 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 Primary Production Small Lots, 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.

Note.

When this Plan was made it did not include all of these zones.

(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 development 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.

RESPONSE

Clause 4.3(2) Height of Buildings, of the Warringah Local Environmental Plan 2011 is a development standard.

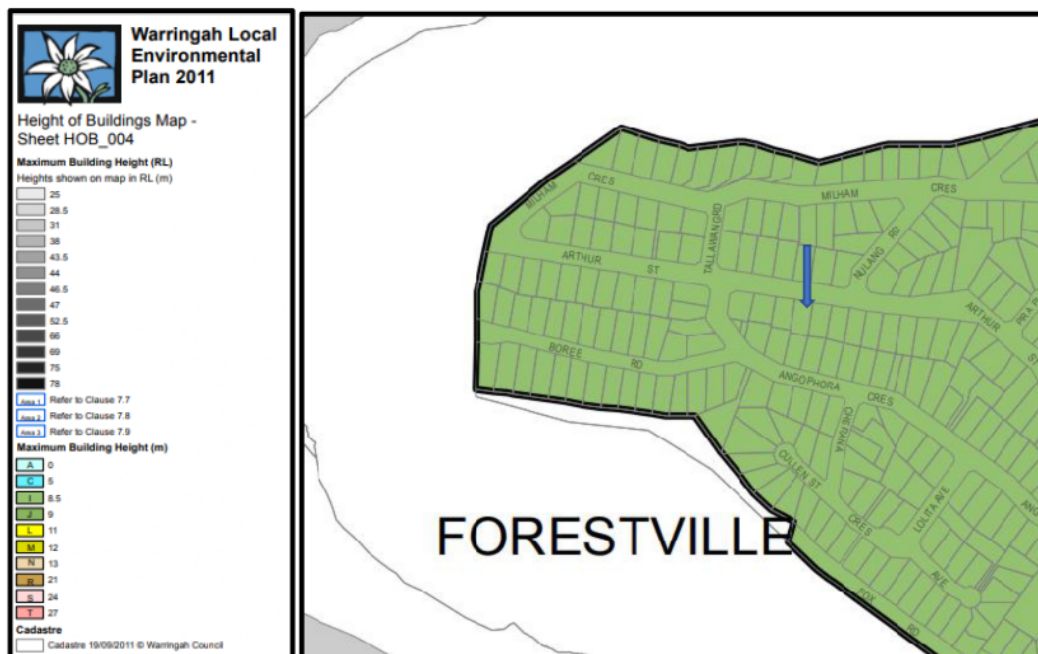
This request is composed and informed by decisions of the Land and Environment Court and in particular the judgments in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council*

Clause 4.6 – Exception to a Development Standard-Building Height
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[2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248,
Micaul Holdings Pty Ltd v Randwick City Council [2015] NSWLEC 1386,
Moskovich v Waverley Council [2016] NSWLEC 1015 and *Wehbe v*
Pittwater Council [2007] NSWLEC 827. The submission addresses the
requirements of Clause 4.6.

This written application seeks an exception to a development standard as
it could be seen that the proposal will breach the development standard
as prescribed within the Maps component of the Warringah Local
Environmental Plan 2011 as illustrated in the following Section 2.0.

2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT



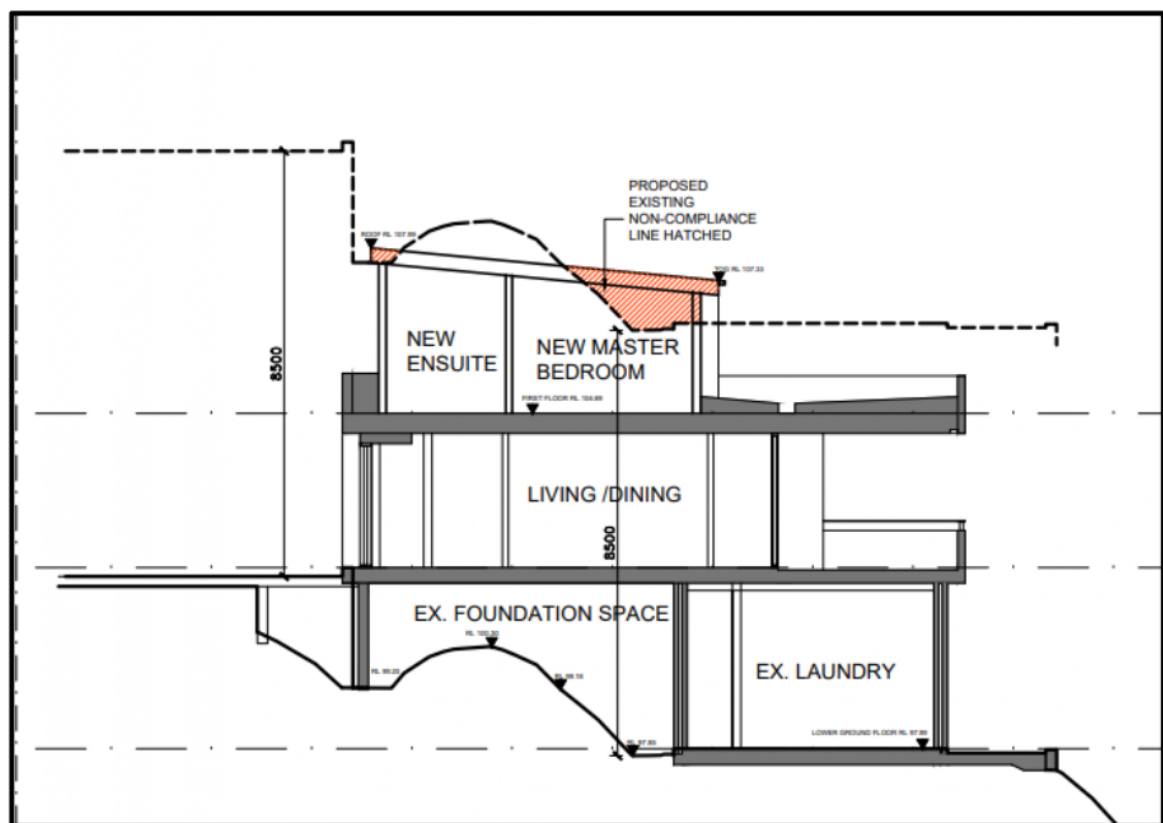
**EXTRACT FROM WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011 –
HEIGHT OF BUILDINGS MAP PRESCRIBING 8.5M MAXIMUM BUILDING HEIGHT
WITH SUBJECT SITE INDICATED**

Clause 4.6 – Exception to a Development Standard-Building Height
105 Arthur Street Forestville

COMMENT

The subject site as identified within the Maps incorporated within the Warringah Local Environmental Plan 2011 prescribe a development standard of a maximum building height of 8.5metres.

The following extract from the architectural details illustrate the proposed finished roof ridge height. The extent of the potential breach is tempered by the fact that, if the internal ground level is used as the existing ground level the proposal is substantially compliant.



SECTION THROUGH PROPOSAL

Clause 4.6 – Exception to a Development Standard-Building Height
105 Arthur Street Forestville

3.0 THE OBJECTIVES OF THE DEVELOPMENT STANDARD

4.3 Height of buildings

(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.*

RESPONSE

The proposal addresses the above Objectives as follows-

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

The subject proposal is entirely compatible with the height and scale of surrounding and nearby development as evidenced by the comparative heights and configurations of the adjacent site to the west of the subject site containing a three level dwelling.

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

The proposal by virtue of its minimal contribution to building bulk does not materially impact upon views, privacy or solar access.

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

The proposed alterations under the subject development application are unlikely to be identified from any of Warringah's coastal or bush environments.

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

The minor change to the upper level will be almost imperceptible from any parks reserves roads or community facilities within the locality.

Clause 4.6 – Exception to a Development Standard-Building Height
105 Arthur Street Forestville

**4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE
OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?**

The subject proposal seeks to construct an extension to an existing upper-level component of the existing dwelling in a manner that is entirely consistent with the existing upper-level built form.

The subject additional works are only non-compliant by virtue of the fact that the subfloor area has been reconfigured in terms of the ground levels to this area and as such result in a potential interpretation of the height control being breached.

**5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY
CONTRAVENING THE DEVELOPMENT STANDARD?**

The subject proposal does not offend any of the objectives under the R2 Low Density Residential zone as the proposal assists in providing for the housing needs of the community and does not prevent the attainment of the objectives for providing facilities or services that meet the day to day needs of residents nor does the proposal result in any loss of landscaped area.

Clause 4.6 – Exception to a Development Standard-Building Height
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6.0 WILL THE PROPOSAL BE IN THE PUBLIC INTEREST?

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to certain matters as follows;

- (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.*

RESPONSE

This written request has addressed the relevant components under subclause 3 and the public interest is served by the provision of a consistent built form albeit (potentially) breaching the height control however the lack of material impacts and the provision of a consistent built form results in a proposal that supports the public interest.

Clause 4.6 – Exception to a Development Standard-Building Height
105 Arthur Street Forestville

7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

I believe that the proposal is well founded and makes it clear that the additional floor area albeit potentially breaching the development standard, is a necessary outcome to achieve a uniform building height and typology without materially impacting upon views, building bulk or solar access.



LANCE DOYLE
REGISTERED PLANNER
M. PLAN (UTS) B. APP SC. (UWS) RPIA

Dated: AUGUST 2021

ITEM 3.2

MOD2021/0442 - 5 EDGECLIFFE BOULEVARDE, COLLAROY PLATEAU - MODIFICATION OF DEVELOPMENT CONSENT DA2018/1373 GRANTED FOR DEMOLITION WORKS, CONSTRUCTION OF A NEW DWELLING HOUSE INCLUDING A SWIMMING POOL

REPORTING MANAGER Lashta Haidari
TRIM FILE REF 2021/695650
ATTACHMENTS
1 Assessment Report
2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Council, as the consent authority, **approves** MOD2021/0442 for Modification of Development Consent DA2018/1373 granted for demolition works, construction of a new dwelling house including a swimming pool on land at Lot 2 DP 1209331, 5 Edgecliffe Boulevarde, Collaroy Plateau, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0442
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 2 DP 1209331, 5 Edgecliffe Boulevarde COLLAROY PLATEAU NSW 2097
Proposed Development:	Modification of Development Consent DA2018/1373 granted for demolition works, construction of a new 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:	Michael Frederick Moore Jane Yolande Moore
Applicant:	Michael Frederick Moore
Application Lodged:	01/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	09/07/2021 to 23/07/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

The application seeks to modify the height of a portion of fence along the southern boundary and subsequently modify consent Condition 1C that was imposed by the Development Determination Panel (DDP) which relates to this section of boundary fence adjacent to the swimming pool on 5 Edgecliff Boulevard. As the application seeks to amend a condition imposed by the DDP, the application is referred back to the DDP for determination. The application also seeks a minor 7.1sqm reduction in landscaped area.

The application was notified for a period of 14 days and one (1) objection was received raising concern

with the proposed configuration of the fence. The issues raised are addressed later in this assessment report.

The applicant seeks to amend the height of the boundary fence and rely upon this boundary fence to comply with the provisions of the *Swimming Pools Act 1992* to provide a compliant child-resistant barrier for the swimming pool. In assessing the proposal to increase the height of the fence, consideration has been given to the weight the *Swimming Pools Act 1992* has in deciding the location and height of the fence, along with consideration of the view impacts arising from the additional fence height, consideration of the DCP fencing controls and the issues raised in the public submissions.

The proposal results in a view sharing outcome consistent with the *Tenacity* Planning Principle as detailed in this report, with the view impact considered minor and acceptable. Furthermore, the proposed fence is not considered to result in any particular unreasonable amenity impacts with regards to solar access or visual amenity for the adjoining property due to the existing elevation of the adjoining deck and levels between the properties. It is noted Clause 18 of the *Swimming Pools Act 1992* provides the owner of the swimming pool may decide where the child resistant barrier is to be located and therefore the owner seeks to have the child resistant barrier located adjacent to the southern boundary at a height of 1.8m measured from the pool area.

On balance, the proposal is recommended to the DDP for approval for the reasons outlined in this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks to modification to development consent DA2018/1373 (as then subsequently modified by MOD2020/0605). The changes that are sought to be made are as follows:

1. Change a previously approved area of landscaping adjacent to the pool from grass to concrete, being approximately 7.1sqm.
2. Seeking amendment to the boundary fence which sits to the south of the pool and alongside the shared boundary with 3A Edgecliff Boulevard (however wholly within the land 5 Edgecliff Boulevard, as required by the condition). The applicant seeks to rely upon this section of boundary fence to form a 1.8m height pool safety barrier to meet the requirements of the *Swimming Pools Act 1992*. The section of fence is currently subject to the following condition of consent (condition 1C of MOD2020/0605) as recommended by the DDP at the meeting of 14 April 2021:

Condition 1C Restriction on height of southern side boundary fence to read as follows:

The masonry fence is to be wholly located within, and not constructed on the property boundary.

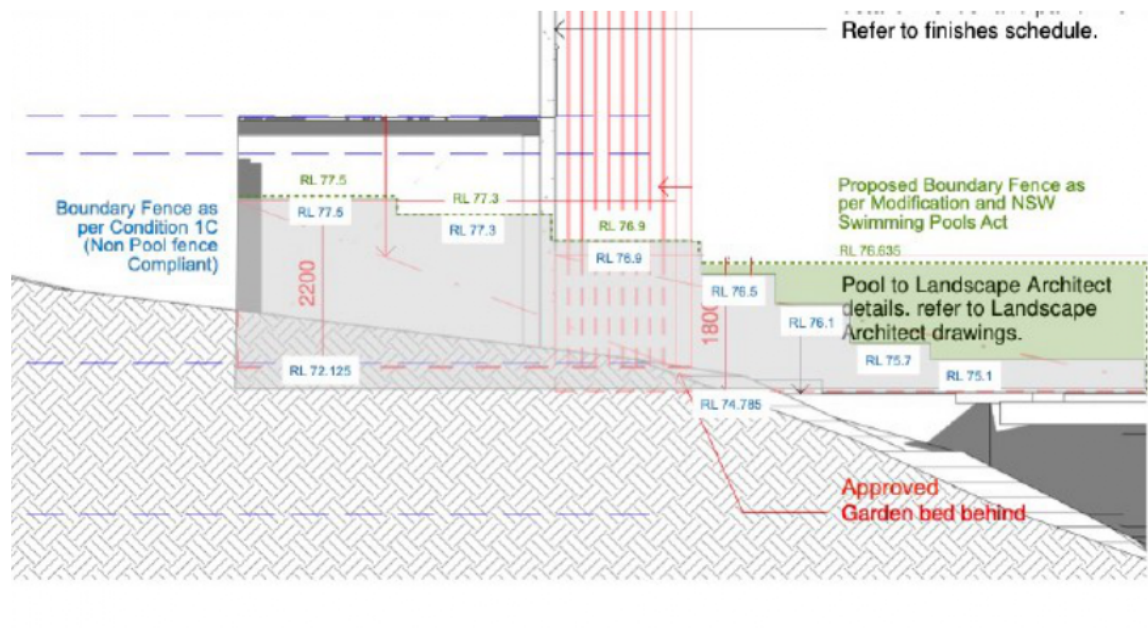
The masonry fence is to be stepped down the slope in following intervals (measurements starting from the bottom of the stairs adjacent to the corner of the Lower ground Floor Rumpus area – DA03 Lower Ground Floor dated 29/10/20) :

- For an extent of 2 metres: RL77.5
- For an extent of 2 metres: RL77.3
- For an extent of 2 metres: RL76.9
- For an extent of 1 metre: RL76.5
- For an extent of 1 metre: RL76.1
- For an extent of 1 metre: RL75.7
- For an extent of 1 metre: RL75.5

Each elevation of the fence is also to be provided with a rendered/painted finish.

Details are to be provided prior to the issue of a Construction Certificate. A surveyors certificate is to be provided at the completion of works to ensure compliance with the location and heights.

The applicant has provided an elevation plan showing the portion of fencing to be amended, with the highlighted green section the proposed additional height of fence:



The applicant seeks for the fence to maintain an RL of 78.635 in accordance with the above plan to achieve compliance with the *Swimming Pools Act 1992*. This will necessitate amendment to the above condition 1C to allow this to occur in accordance with the above plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D15 Side and Rear Fences

SITE DESCRIPTION

Property Description:	Lot 2 DP 1209331 , 5 Edgecliffe Boulevarde COLLAROY PLATEAU NSW 2097
Detailed Site Description:	<p>The subject site consists of 1 allotment legally known as Lot 2 DP 1209331. It is located on the eastern side of Edgecliffe Boulevarde.</p> <p>The site is irregular in shape with a frontage of 14.85m along Edgecliffe Boulevarde and a depth of 46.81m. The site has a surveyed area of 679.6m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two story dwelling with an attached carport. The property gains vehicular access via a right-of-carriageway over No. 3A Edgecliffe Boulevard.</p> <p>The site is characterised by a significant slope, which falls approximately 14.62 metres from the western boundary to the eastern boundary.</p> <p>Adjoining and surrounding development is characterised by relatively large detached residential dwellings, many of which gain sweeping views of Collaroy and Narrabeen Beach, the ocean and district views to the north and east. Adjoining the eastern boundary of the subject site is a public reserve that contains dense vegetation.</p>

Map:



SITE HISTORY

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

DA2017/1190

This DA was for the construction of a dwelling house, an attached secondary dwelling and a swimming pool, it was withdrawn on 22 February 2018 due, in part, to engineering issues associated with Council's drainage pipe on the subject site. The proposal also contained unacceptable non-compliances with the building height control, wall height, side boundary envelope, side boundary setback, front boundary setback and landscaped open space requirements.

DA2018/1373

This application was very similar to the previous application, with the main differences being the deletion of the secondary dwelling, revising the design to reduce the extent of, or remove the non-compliances and addressing the engineering issues.

MOD2020/0605

Application to modify development consent DA2018/1373 via a Section 4.55(1A) to amend various elements of the proposal including modification to fencing, relocation of stairs, extension of a balcony, privacy screens and changes to landscaping. This application was approved by the Development Determination Panel on 14 April 2021, subject to conditions including the condition which is sought to be modified under the current proposed modification application for the masonry fence to the south of the swimming pool.

Mod2021/0240

Modification of Development Consent DA2018/1373 under Section 4.55(1) Minor Error or Misdescription to amend typographical error of wording of a conditions 24, 25 and 27 approved 04/05/2021 by Northern Beaches Council.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1373, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1373 for the following reasons: - The proposed reduction in landscaping of 7.1sqm is minor and does not detract from the character or visual outcomes of the site. - The proposal is to amend a condition of consent relating to a fence in a different configuration to what was approved by Council. The original consent included a fence and the proposed amendment continues to include a fence, therefore, substantially the same development.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.

Section 4.55(1A) - Other Modifications	Comments
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

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

Section 4.15 'Matters for Consideration'	Comments
	<p>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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 in the original consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</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 in the original 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 in the original consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah/Manly/Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public	No matters have arisen in this assessment that would justify the

Section 4.15 'Matters for Consideration'	Comments
interest	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 09/07/2021 to 23/07/2021 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 1 submission/s from:

Name:	Address:
Mr Richard Lindsay Tebbutt	3 A Edgecliffe Boulevardde COLLAROY PLATEAU NSW 2097

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

- Objection to the additional fencing height which will result in view impacts, visual impacts, non-compliance with DCP side fencing control.
- Issue with the applicant seeking amendment to a decision of the Development Determination Panel via a modification application.
- The previous approvals included a 1m height glass pool fence adjacent to the pool enclosure to form a pool safety barrier and therefore the proposed 1.8m boundary fence should not be approved, as pool compliance is already achieved.
- Privacy should not form part of the consideration of the boundary fence as the pool was built after the dwelling on 3A Edgecliff Boulevard.
- The privacy screen required to be installed as part of the consent conditions for the secondary dwelling approved for 3A Edgecliff Boulevard should not be considered relevant in the assessment as the development consent for the secondary dwelling has not been acted upon.

The matters raised within the submissions are addressed as follows:

- *Objection to the additional fencing height which will result in view impacts, visual impacts and non-compliance with DCP side fencing control.*
Comment:
This assessment report makes a detailed view impact analysis of the proposed fence in accordance with the *Tenacity* Planning Principles. The proposal is considered consistent with the view sharing principle established by the Tenacity Planning principle and the proposal acceptable in this regard.

A detailed discussion and assessment against the Warringah DCP Boundary Fence Height controls is undertaken later in this report. In summary, the provisions of the *Swimming Pools Act 1992* override the Warringah DCP in order to comply with a compliant child-resistant barrier. Detailed discussion of this issue is later in this assessment report.

- *Issue with the applicant seeking amendment to a condition and decision of the Development Determination Panel via a modification application.*

Comment:

A land owner is entitled to submit a modification application seeking to amend any aspect of a development consent or a consent condition imposed by Council, including conditions imposed by the DDP. Each modification application is considered on merit and the particular circumstances of the case. As the proposal seeks to amend a condition imposed by the DDP, the application is required to be reported back to the DDP for determination.

- *The previous approvals included a 1m height glass pool fence adjacent to the pool enclosure to form a pool safety barrier and therefore the proposed 1.8m boundary fence should not be approved, as pool compliance is already achieved.*

Comment:

It is correct that there is a previous landscape plan approved as part of DA2018/1373 (Drawing No L-01 Revision D dated 16 August 2018) that shows a 1m height glass pool fence between the southern boundary and the pool. However, the applicant as part of this modification application seeks to place a pool barrier adjacent to the boundary in order to comply with the *Swimming Pools Act 1992*, and as per Clause 18 of the *Swimming Pools Act 1992* the owner of the pool may choose where the child resistant-barrier is placed to comply with the Act. As it is adjacent to the boundary, it must be 1.8m to comply. The applicant has also provided detailed information from a swimming pool certifier regarding how compliance with the Act is achieved via the proposal.

- *Privacy should not form part of the consideration of the boundary fence as the pool was built after the dwelling on 3A Edgecliff Boulevard.*

Comment:

As detailed later in this report, the additional privacy that will be achieved for the pool area does not form part of consideration of the recommendation of approval.

- *The privacy screen required to be installed as part of the consent conditions for the secondary dwelling approved for 3A Edgecliff Boulevard should not be considered relevant in the assessment as the development consent for the secondary dwelling has not been acted upon.*

Comment:

The view impact assessment has been undertaken based on the views currently obtained from the dwelling at 3A Edgecliff Boulevard as per the present state of the dwelling and without consideration of the privacy screen required as part of the the secondary dwelling, should this consent be acted upon.

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate was submitted with the original application and the proposed modifications do not change any requirements of SEPP BASIX.

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.93m (Dwelling)	No change to house Fence within height limit	N/A	House unchanged Fence complies

Compliance Assessment

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

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
D1 Landscaped Open Space and Bushland Setting	40%	43%	42% (7.1sqm reduction)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D15 Side and Rear Fences	No	Yes
D20 Safety and Security	Yes	Yes

Detailed Assessment

D7 Views

Merit consideration

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

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The view to be impacted in a a standing position is a view of Narrabeen Beach which includes the land/water interface and forms part of a whole view that is part of Panoramic views to the north, east and south-east from the affected property. The view impacted in a sitting position is of Narrabeen Beach and the Northern Headland of Narrabeen Beach, along with the view impacted of a series of headlands northwards along the Peninsula.



Figure 1 - Standing position looking north-east from the lower deck of 3A Edgecliff Avenue, red line representing the height of the proposed masonry fence. Photo by assessing officer.



Figure 2 - Sitting position looking north-east from the lower deck of 3A Edgecliff Avenue, red line representing the height of the proposed masonry fence. Photo by assessing officer.



Figure 3 - View currently obtained in a standing position looking east from the lower ground floor deck. It is noted that similar views are obtained from the deck of the level above off the living room, the living room itself and the upper floor bedrooms 1 and 2. Photo by assessing officer.

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

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

Comment to Principle 2:

The view to be impacted is obtained over a side boundary in both a sitting and standing position. The view is obtained from the lower ground floor deck, which is on the bottom level at the rear of the property. The deck is situated off a rumpus room associated with the residential dwelling house (the use of the room marked as rumpus room on DA2014/0720). Some ocean views from within this Rumpus room would also be impacted, however at the time of

assessment Council staff were not able to enter into the property due to COVID restrictions. It is also noted that rumpus room has recently received development consent to be converted to a secondary dwelling and the deck forming part of the Private Open Space for the secondary dwelling. However, the development consent for the secondary dwelling is yet to be formally acted upon by the owner of 3A Edgecliff Boulevard and therefore, the assessment is undertaken based on the current state and use of the property.

3. Extent of impact

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

Comment to Principle 3:

The property 3A Edgecliff Boulevard presently has a number of rooms and two decks which enjoy uninterrupted whole coastal views towards the east which will be fully retained. The views retained looking directly east over the rear boundary consist of Collaroy Beach, Long Reef Headland and a large portion of the ocean horizon, which forms the primary view looking east from the site over the rear boundary (as show in Figure 3). This view is obtained looking east from the lower ground floor deck and rumpus room, the ground floor living/dining area and kitchen, the ground floor balcony, the First Floor Bedroom 1 and Bedroom 2. These direct easterly views are not impacted as a result of the development and substantial ocean views are retained from each of the above areas of the dwelling, including the lower ground floor deck and rumpus room.

The ground floor deck off the living room will retain views looking from the north over the side boundary including views of North Narrabeen Beach and series of headlands north along the Peninsula. A portion of these views looking north will also be obtained from the dining room/living room through a louver privacy screen approved under the previous modification application.

The view looking towards the north from the lower ground floor deck will be impacted as a result of the proposed fence. A portion of Narrabeen Beach view will be impacted from a standing position whilst looking north over the side boundary, however the the distant headlands will be retained from a standing position and a remaining section of North Narrabeen Beach. The whole of Narrabeen Beach and the headlands from the lower ground floor deck will be impacted looking north from a seated position. However, the easterly view over the rear boundary which includes the Ocean Horizon, Collaroy Beach and Long Reef Headland will be retained from the lower ground floor deck in a seated and standing position (as seen the above Figures).

When considering the expansive views that will be retained looking east from both decks, Bedrooms 1 and 2, living and dining rooms and the rumpus room, the relatively large portions of view looking north from the deck off the living room, the portion of view lost over the side boundary from the lower ground floor deck is **considered to be minor** as a proportion of the expansive views retained for the whole of the property.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The view impact is a result of a boundary fence which also acts as compliant pool safety barrier in accordance with the *Swimming Pools Act 1992*. Clause 18 of the *Swimming Pools Act 1992* states that *"The owner of any premises in or on which an outdoor swimming pool is situated may, subject to the other provisions of this Part, determine where any child-resistant barrier required by this Part is to be located"*. In this circumstance, the applicant is choosing to locate the child-resistant barrier alongside the boundary between the two properties and in order to comply with the requirements of the *Swimming Pools Act 1992*, a child-resistant barrier along the side boundary is required to measure at least 1.8m above the ground level of the property in which the pool is located (i.e the ground level associated with the approved pool within 5 Edgecliff Boulevard).

It has been established in the case law via the NSW Civil and Administrative Tribunal case *Gibbs v Draper [2014] NSWCATCD 83* that where a dividing fence also acts as a child-resistant barrier the boundary fence is required to be 1.8m high to achieve compliance with the *Swimming Pools Act 1992* and the owner of the land on which the swimming pool is located may choose the material used for the boundary fencing to form the child-resistant barrier, as the owner of the land is solely responsible for the cost of that fence and liable to comply with the law (paragraph 58 *Gibbs v Draper [2014] NSWCATCD 83*). As for the proposed fence, the material proposed is masonry which is a continuation of the stepped masonry wall which was approved subject to conditions under the previous modification application. This material is considered suitable to be consistent with the fence as constructed to date and to form a compliant child-resistant barrier.

Whilst it is acknowledged that the fence would measure greater than 1.8m from the natural ground level of the land within 3A Edgecliff Boulevard due to the difference in levels between sites, the height of the fence is only experienced from the lower ground floor deck and the area of land beneath and alongside the deck is a relatively narrow and unusable space that is not considered to be subject to an adverse amenity impact, with the impact upon views detailed later in this assessment. Furthermore, the provisions of the *Swimming Pools Act 1992* prevails over any other other act (but to the extent only of the inconsistency) which would include consideration of a boundary fencing height under a Development Control Plan. The issue of fencing height under the Warringah DCP is discussed in detail under Clause D15 of this assessment report.

The proposed child-resistant barrier is proposed in accordance with the requirements of the *Swimming Pools Act 1992* and the option of the owner to choose the location and material of fencing is consistent with case law relative to this circumstance. The view impact is considered to be minor in the context of the expansive views to be retained from multiple areas and decks within the house and the view to be impacted is obtained directly over the side boundary and the worst impact from a seated position, with views to the northern headland and portions of Narrabeen Beach retained from a standing position on the lower ground floor deck.

Therefore, on balance the proposal is considered to be reasonable with regards to view sharing and the proposed fence is supported.

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

Comment:

The proposed fence is designed to comply with the relevant legislation for pool safety, with no other particular innovative design solution relevant given the view impact is minor.

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

Comment:

Not applicable to this development.

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

D8 Privacy

The applicant has stated the proposed fence will provide additional privacy for the pool area. Although this is correct and additional privacy will result from the fence, the additional visual privacy the fence will offer does not form part of reason for the supporting recommendation for the pool fence, as the pool was built adjacent to an existing elevated deck which has the ability to overlook into the pool area due to the difference in levels between properties (i.e the deck was there first).

D15 Side and Rear Fences

The DCP states the following for boundary fences:

- *Generally, side and rear boundary fences are to be no higher than 1.8 metres on level sites, or 1.8 metres measured from the low side where there is a difference in either side of the boundary.*

The proposed amended section of boundary fence in order to achieve compliance with the *Swimming Pools Act 1992* is required to be 1.8m measured from the surrounding pool deck inside 5 Edgecliff, with the pool barrier/fence proposed at RL 76.635. There is a level difference between the two sites 5 Edgecliff Boulevard and 3A Edgecliff Avenue (land within 3A Edgecliff falling away) and as a result the fence will be a variable height of between 1.6m and 3.6m when measured from the land 3A Edgecliff, non-compliant with the DCP control (based on the survey levels of the site which vary between RL 73 to RL 75 alongside the boundary).

However, it is noted that where there is an inconsistency between the provisions of the *Swimming Pools Act 1992* and any other act, law or agreement, the provisions of the *Swimming Pools Act* are to prevail, but to the extent only of the inconsistency. This would include any inconsistency with a requirement of the *Environmental Planning and Assessment Act 1979* which calls up consideration of a control under a Development Control Plan which includes the Warringah DCP. Therefore, the requirement to have a 1.8m height child-resistant barrier measured from the land in which the pools sits is in accordance with the *Swimming Pools Act 1992* which prevails over the Warringah DCP. Although

not relevant to this application, the *Swimming Pools Act 1992* also prevails over the *Dividing Fences Act* when relevant to a boundary fence that forms a compliant child-resistant barrier.

Furthermore, the area of land within 3A Edgecliff which the masonry fence is adjacent to is a narrow strip which adjoins the undercroft of the lower ground floor deck and is not used as Private Open Space or an area that would have a particular amenity impact as a result of the fencing height (see figure 1).

The impacts upon views from the lower ground floor deck as a result of the fence are assessed elsewhere within this report and found to be acceptable. The height of fence relative to the lower ground floor deck within 3A Edgecliff is 1.245m above deck level (RL75.39), which is not considered to be visually excessive when viewed from the lower ground floor deck area, which forms part of the private open space of the dwelling.

Therefore based on the above the departure from the DCP is able to be supported.



Figure 1 - Photograph looking west between 3A Edgecliff and 5 Edgecliff Boulevard showing current state of land and level change.

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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

In conclusion, the proposed development has been considered against the view sharing principles and the requirement to have a compliant pool safety barrier in accordance with the Swimming Pools Act 1992. On balance, the proposal does not cause any unreasonable impacts and is recommended for approval to the DDP.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0442 for Modification of Development Consent DA2018/1373 granted for demolition works, construction of a new dwelling house including a swimming pool on land at Lot 2 DP 1209331,5 Edgecliffe Boulevard, COLLAROY PLATEAU, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA03	29/10/2020	Olive and Green
DA09	29/10/2020	Olive and Green
Photomontage	Undated	Unsigned

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

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

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

B. Modify Condition 1C Restriction on height of southern side boundary fence to to read as follows:

The masonry fence is to be wholly located within, and not constructed on the property boundary.

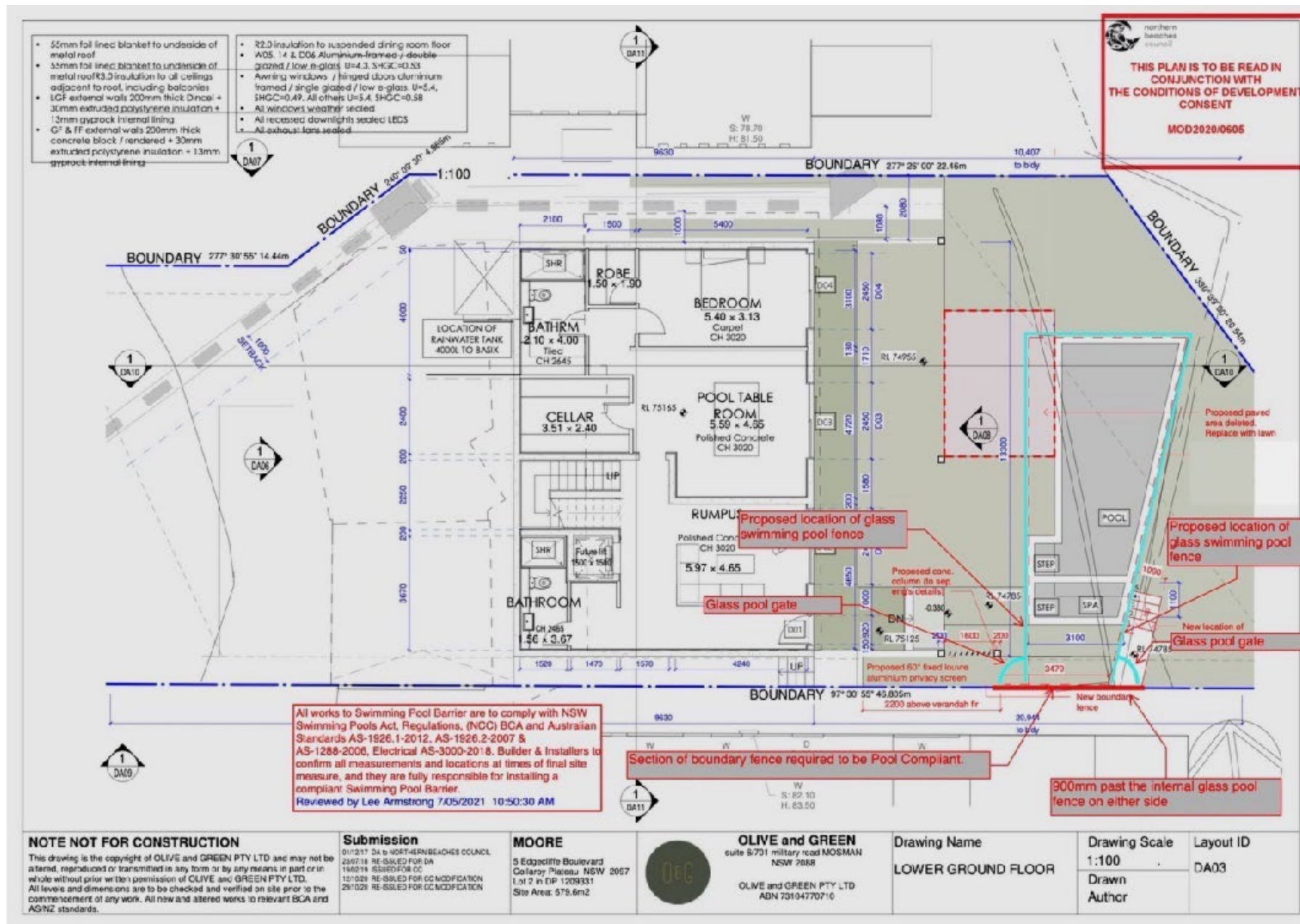
The masonry fence is to be stepped down the slope in following intervals (measurements starting from the bottom of the stairs adjacent to the corner of the Lower ground Floor Rumpus area – DA03 Lower Ground Floor dated 29/10/20) :

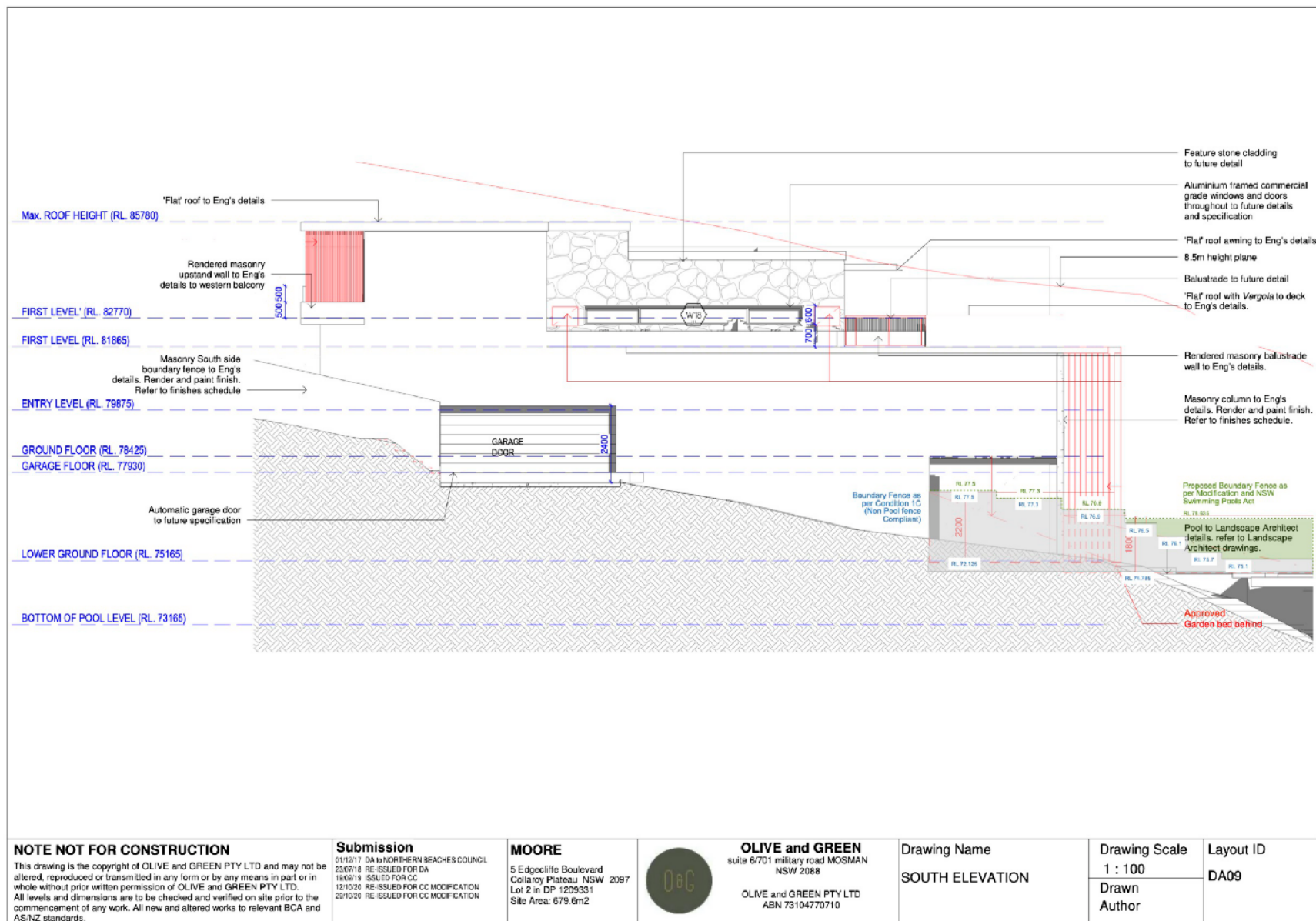
- For an extent of 2 metres: RL77.5
- For an extent of 2 metres: RL77.3
- For an extent of 2 metres: RL76.9
- For the remainder of the fence set at RL76.635 and finishing where necessary as to comply with the *Swimming Pools Act 1992*.

Each elevation of the fence is also to be provided with a rendered/painted finish.

Details are to be provided prior to the issue of a Construction Certificate. A surveyors certificate is to be provided at the completion of works to ensure compliance with the location and heights.

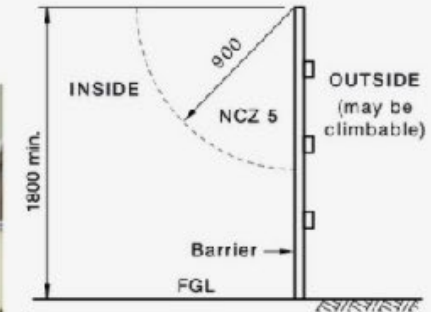
Reason: To allow compliance with the *Swimming Pools Act 1992*.





All works to Swimming Pool Barrier are to comply with NSW Swimming Pools Act, Regulations, (NCC) BCA and Australian Standards AS-1926.1-2012, AS-1926.2-2007 & AS-1288-2006, Electrical AS-3000-2018. Builder & installers to confirm all measurements and locations at times of final site measure, and they are fully responsible for installing a compliant Swimming Pool Barrier.
Reviewed by Lee Armstrong 7/05/2021 10:51:22 AM

A boundary fence acting as a Pool Barrier must be min. height 1800mm above finished ground level on the pool owners side AS1926.1-2012 - 2.2.4 Boundary barriers



(a) Boundary barrier 1800 mm min.

Min 900mm required to protect the Non Climb Zones of the internal 1200mm high glass pool fence

Standard min. height 1200mm glass pool fence

Min 900mm required to protect the Non Climb Zones of the internal 1200mm high glass pool fence

Standard min. height 1200mm glass pool fence

Finished tile level of pool deck area

Area of landscaping/grass

ITEM 3.3

**REV2021/0020 - 316 HUDSON PARADE, CLAREVILLE -
REVIEW OF DETERMINATION OF APPLICATION DA2020/1591
FOR ALTERATIONS AND ADDITIONS TO A DWELLING
HOUSE AND GARAGE.**

REPORTING MANAGER

Rebecca Englund

TRIM FILE REF

2021/695731

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 PLEP 2014 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** REV2021/0020 for Review of Determination of Application DA2020/1591 for alterations and additions to a dwelling house and garage on land at Lot 1 DP 827733, 316 Hudson Parade, Clareville, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0020
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 1 DP 827733, 316 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Review of Determination of Application DA2020/1591 for alterations and additions to a dwelling house and garage
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Tony Brian Walls
Applicant:	Baxter & Jacobson Architects Pty Ltd
Application Lodged:	08/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	15/06/2021 to 29/06/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 9.88%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,005,146.00

EXECUTIVE SUMMARY

The subject application is made under Section 8.3 of the EPA Act, and seeks review of the determination of DA2020/1591 for alterations and additions to the existing dwelling house, which was approved by Council under staff delegation on 4 May 2021. Specifically, the application seeks review of the imposition of conditions that required amendment of the western windows/balustrade, roof, internal amenities and configuration of the proposed gym/studio.

Minor amendments to the proposal were made to address concerns in relation to the proposed gym/studio. The amendments adequately address these concerns and the previously imposed condition 10 can be removed.

The application is referred to the Development Determination Panel (DDP) for determination in accordance with the DDP Charter.

The proposal includes a maximum building height of 9.34m, resulting in a variation of 9.88% to the height of buildings development standard. The breach relates to a small portion of the upper floor roof located centrally within the site and will not result in any unreasonable visual bulk or amenity impacts. An assessment of the proposed building height breach and the accompanying Clause 4.6 written request is undertaken within this report and is found to be satisfactory.

One submission was received in response to the notification of the application, and has been addressed within the assessment.

No further assessment issues are raised and the proposal is recommended for approval based on the detailed assessment within this report.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks review of the approval of DA2020/1591, which sought consent for alterations and additions to the existing dwelling house and extension of the existing detached double garage and workshop for use as a gym/studio.

The proposal, as submitted, included works as follows:

Dwelling

- Internal reconfiguration of lower ground floor to provide a robe to bed 4, a new bathroom, wine cellar and lift access
- Internal reconfiguration of level 1 to provide a main entry, kitchen, dining & living room, balcony, laundry, WC, and bedrooms 1 & 2 with ensuites
- Extension of attached garage
- New upper floor addition to accommodate a master bedroom with robe, ensuite and west facing deck
- New windows, doors and copper roof

Detached Garage & Gym/Studio

- Eastern addition containing a ground floor store, upper floor bathroom and entry stair
- Demolition of internal walls and new wet bar
- Enclosure of western balcony, new windows and doors
- New roof
- Use of the upper floor as a gym/studio

External Works

- Demolition of retaining walls and construction of new retaining walls and stairs
- Outdoor pavilion and pond feature

Amendments to proposal

Following lodgement of the review application, further amendments to the detached gym/studio building were made as follows:

- Enclosure of balcony deleted and existing western wall location retained
- Southern side setback to balcony increased to 1.55m
- Western balcony eave overhang reduced by 520mm to 600mm
- Bathroom dimensions reduced
- Changes to proposed windows to suit amendments

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - B3.1 Landslip Hazard

Pittwater 21 Development Control Plan - B5.15 Stormwater

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - D3.7 Side and rear building line
Pittwater 21 Development Control Plan - D3.9 Building envelope
Pittwater 21 Development Control Plan - D3.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 1 DP 827733 , 316 Hudson Parade CLAREVILLE NSW 2107
Detailed Site Description:	<p>The subject site consists of a large, irregular shaped allotment located on the western side of Hudson Parade, adjoining the Pittwater Waterway to the west.</p> <p>The site has frontage of 20.6m along Hudson Parade with a depth of 49.68m. The site has a surveyed area of 1902m².</p> <p>The site is located within the E4 Environmental Living zone under PLEP 2014 and accommodates a large split level, brick dwelling, detached double garage, and in-ground swimming pool. The site benefits from pedestrian access from the land to the waterway to the west.</p> <p>The site slopes steeply to the west away from Hudson Parade and towards the Pittwater Waterway with a fall of approximately 17m and slope of 34.2%.</p> <p>The site is characterised by a densely vegetated front setback to Hudson Parade with a mix of vegetation types, including native canopy trees, while the remaining site is characterised by predominantly established garden beds and lawn areas.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by large dwellings set within a low-density residential, landscaped setting.</p>

Map:



SITE HISTORY

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

- BA 924/84 - Upper floor extension to the existing garage for use as a workshop - 2 April 1984. Conditions restricted the use / adaption of the upper floor to habitable accommodation.
- T0348/16 - Development Application (Tree removal application) - 17 August 2016.
- T0481/16 - Development Application (Tree removal application) - 15 November 2016.
- CDC0202/16 - Repairs and restorations of existing marine structures - 25 November 2016.
Note: This consent (twice modified since its original approval) was surrendered on 26 April 2020.
- DA2020/1591 - Alterations and additions to a dwelling house and garage - Approved 16 December 2020
- DA2020/1762 - Demolition works and construction of boatshed, ramp, slipway, jetty & steps - 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 Assessment

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition 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 Matters for Consideration'	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

Section 8.3 Assessment

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

As the development application was determined within the 'prescribed period', the review must be lodged and determined within 12 months of the date of determination of the development application. The prescribed period is the period commencing on 25 March 2020 and ending on 25 March 2022, which was included in the *COVID-19 Legislation Amendment (Emergency Measures - Miscellaneous) Bill 2020* to provide additional measures to mitigate the impacts of the current pandemic. To meet this requirement, noting that the development application was determined on 4 May 2021, the subject review application must be determined before 4 May 2022.

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

The amendments to the proposal are outlined in the 'Proposed Development in Detail' section of this report.

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

Act

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/06/2021 to 29/06/2021 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 1 submission/s from:

Name:	Address:
Mr Samuel Nicholas Wallrock Lucy Wallrock	318 Hudson Parade CLAREVILLE NSW 2107
Mr Samuel Nicholas Wallrock Lucy Wallrock	318 Hudson Parade CLAREVILLE NSW 2107

The matters raised within the submissions are addressed as follows:

- **Western extension of proposed gym/studio**

Concern is raised in relation to the overlooking impacts from the western end of the gym/studio and the visual bulk of the proposed new roof.

The amended proposal retains the existing balcony location and glazing/wall line, with an increased southern side setback to the western blade wall. Whilst the proximity to the adjoining property is acknowledged, the primary outlook from the gym/studio is to the west towards the available views, and any view lines to the adjoining property are at an acute downward angle over the side boundary. The amended proposal is considered to provide an appropriate response to the site context and will not result in unreasonable overlooking impacts. Similarly, the proposed gable roof will not result in adverse visual impact as it is located above and to the east of the private open space area of the adjoining property. The roof extension will be visible from other areas including within the dwelling of 318 Hudson Parade, however these areas are further separated from the gym/studio structure.

- **Internal bathroom and wet bar**

Concern is raised with the bathroom size, potential for inclusion of cooking facilities and subsequent use as a secondary dwelling.

The amended design includes a reduction to the bathroom size. Despite the inclusion of a wet bar, the application specifies that no cooking facilities are proposed and suitable conditions of consent are imposed in this regard. This prohibition on cooking facilities is satisfactory to ensure the structure is not used as a secondary dwelling and is enforceable by Council.

- **Use of the shared driveway for construction access**

Concern is raised in relation to the use of the shared driveway by construction vehicles,

potential safety impacts and damage to the driveway.

A condition is imposed requiring the preparation of a Construction Traffic Management Plan in relation to the use of the shared driveway. Any potential damage to the existing driveway as a result of the works is not a relevant consideration that would warrant refusal of the application and is a civil matter between the users/owners of the driveway.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>No objection, subject to previously imposed conditions.</p> <p>The Review of Determination application seeks deletion of Condition 10 of the consent for works.</p> <p>No landscape elements are affected by the deletion of the condition.</p> <p>No objections are raised to the review application with regards to landscape issues.</p>
NECC (Bushland and Biodiversity)	<p>No objection, subject to previously imposed conditions.</p> <p>The Review of Determination application seeks deletion of Condition 10 of the consent for works.</p> <p>Impacts on the biodiversity are not altered by deletion of Condition 10.</p> <p>No objections are raised to the review application with regards to Bushland and Biodiversity issues.</p>
NECC (Coast and Catchments)	<p>No objection.</p> <p>The Review of Determination application seeks deletion of Condition 10 of the approval of the DA2020/1591 dated 4 May 2021.</p> <p>A Review report seeking deletion of the Condition 10 has been prepared by Symons Goodyer Pty. Ltd. dated 25 May 2021.</p> <p>Deletion of the Condition 10 has no relevance on coastal issues.</p> <p>No objections are raised to the review application</p>
Parks, reserves, beaches, foreshore	<p>No objection.</p> <p>The Review of Determination application seeks deletion of Condition 10 of the consent for works.</p> <p>Impacts on the reserve are not altered by deletion of Condition 10.</p> <p>No objections are raised to the review application with regards to PR&F issues.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>No objection, subject to conditions.</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A398970 dated 25 November 2020).

SEPP (Infrastructure) 2007

Ausgrid

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

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

power line.

Comment:

The proposal was referred to Ausgrid with suitable conditions recommended.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

Comment:

The development is sited, designed and appropriately conditioned to mitigate any adverse impacts in relation to the above matters.

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

Comment:

The proposed works are generally sited within the existing development footprint of the site. As such, the proposal is unlikely to adversely impact the natural environment, coastal processes, foreshore access or cultural heritage.

14 Development on land within the coastal use area

(1)

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

Comment:

The proposed development will not adversely impact foreshore access or the amenity and scenic qualities of the surrounding foreshore areas. No Aboriginal sites are identified in the vicinity of the site, however suitable conditions are included in this regard. No objection to the development was raised by Council's Coastal Officer.

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

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

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

Comment:

The proposal is unlikely to result in increased risk of coastal hazards on the site or surrounding land.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

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Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.34m	9.88%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.34m
Percentage variation to requirement:	9.88%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

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

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

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

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The building generally complies with the building height control, with the variation relating only to a small part of the roof ridge.*
- *The variation to the building height control is located centrally within a relatively large site. As a result, the distance of the roof ridge from the neighbouring properties, the street and the foreshore mitigate potential impacts such as impacts on views, overshadowing, streetscape, and impacts related to the bulk and scale of buildings.*
- *The proposed variation occurs because the building has been designed to maintain the existing gabled roof form so as to maintain the character of the building and its contribution to the character of the area. A different roof form could be adopted that would comply with the control (eg: a hipped or flat roof form) but this would have no identifiable environmental benefit and would be to the detriment of the character of the area and the architectural consistency of the building.*

Comment: The proposed building height breach is limited to a small portion of the upper floor roof, and is located centrally within the site. The positioning of the non-compliant element of the dwelling ensures adequate separation is maintained to the adjoining properties and foreshore area to mitigate any impact in relation to views, sunlight access and visual bulk. The proposed gable roof form maintains a consistent appearance with the dwelling and is considered to result in minimal visual impact. Based on the location and minor extent of the breach, consistency with the character and landscaped setting of the locality is achieved.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design and amenity, 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), and the consent authority can be satisfied that the applicant's written request has adequately

addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

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

Objectives of development standard

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

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

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

Comment: Despite the proposed building height breach, the development maintains consistency with surrounding residential development and the desired character of the locality. The siting of the dwelling below street level and the minor extent of the breach ensures an appropriate height and scale in the context of the site.

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

Comment: The proposed building height is largely compliant with the control and is compatible with the heights of surrounding development.

c) to minimise any overshadowing of neighbouring properties,

Comment: The proposed height breach will not result in any material overshadowing of neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment: The proposed roof ridge remains significantly below the level of Hudson Parade and will not unreasonably impact views from adjoining properties or the public domain.

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

Comment: The proposal is appropriately stepped in response to the topography of the site.

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

Comment: The proposal maintains sufficient landscaping and canopy trees on the site to minimise visual impact in relation to the natural environment. The proposal will not adversely impact any heritage conservation areas or items.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment: The development provides for low-impact residential development.

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

Comment: The proposal is sited and designed to avoid adverse impact on the ecological, scientific and aesthetic values of the area.

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

Comment: The proposal provides for a low density development that is proportionate to the site area and compatible with the landform and landscape.

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

Comment: The proposal will not adversely impact riparian and foreshore vegetation or wildlife corridors.

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard can be assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

5.10 Heritage conservation

The site does not include a heritage item, is not within a heritage conservation area or in close proximity to a heritage item. The site is mapped as moderate potential for Aboriginal sites. However, given the level of prior disturbance, the development area is unlikely to contain items of indigenous heritage. Suitable conditions are included in the event that any sites are discovered during works.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

The proposed works will be within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum, however the watertable is unlikely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land. An Acid Sulphate Soils Management Plan is therefore not required.

7.6 Biodiversity protection

The subject site is identified as "Biodiversity" on the Biodiversity Map. An assessment against cl. 7.6 is provided below:

Before determining a development application for development on land to which this clause applies, the consent authority must consider:

(a) whether the development is likely to have:

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

Council's Biodiversity Officer raised no objection to the proposal, subject to the recommended conditions of consent including the provision of a landscape plan and replacement native planting. As such, Council is satisfied that the development will not adversely impact the biodiversity and habitat values of the site.

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

Comment:

The proposal will incorporate appropriate measures to avoid, minimise or mitigate the impacts of the development, subject to the included conditions of consent.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

The site is mapped as Geotechnical Hazard H1 and a geotechnical report has been prepared in relation to the development. The report confirms that the development is suitable for the site and the included recommendations are incorporated into the conditions of consent.

7.8 Limited development on foreshore area

Clause 7.8 Limited Development on Foreshore Area states that *Development consent must not be granted for development on land in the foreshore area except for the following purposes:*

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- (b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed dwelling additions will not extend the building footprint further into the foreshore area. The erection of the swimming pool barrier is considered to form part of a swimming pool and its encroachment into the foreshore area is therefore acceptable.

An assessment against cl 7.8 is completed below:

(3) Development consent must not be granted under this clause unless the consent authority is satisfied that:

- (a) the development will contribute to achieving the objectives for the zone in which the land is*
- (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore*
- (c) the development will not cause environmental harm such as:*
 - (i) pollution or siltation of the waterway, or*
 - (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and*
 - (iii) an adverse effect on drainage patterns, or*
 - (iv) the removal or disturbance of remnant riparian vegetation, and*
- (d) the development will not cause congestion or generate conflict between people using open*
- (e) opportunities to provide continuous public access along the foreshore and to the waterway*
- (f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic sign*
- (g) in the case of development for the alteration or rebuilding of an existing building wholly or p*
- (h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of c*

Comment:

The proposed development is consistent with the objectives of the E4 zone and the appearance of the development will be consistent with the surrounding area as viewed from the waterway and foreshore areas. Suitable conditions are included to mitigate environmental harm in relation to pollution, surrounding uses and biodiversity values, drainage patterns and vegetation removal/disturbance. The proposed works are separated from the immediate foreshore area and will not generate congestion or conflict between people using open space, the waterway or foreshore area. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The alterations to the dwelling will not adversely impact the amenity or appearance of the foreshore. The proposed development will not impact upon sea level rise,

coastal erosion or recession, or change flooding patterns.

(4) In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- (a) continuous public access to and along the foreshore through or adjacent to the proposed development
- (b) public access to link with existing or proposed open space,
- (c) public access to be secured by appropriate covenants, agreements or other instruments
- (d) public access to be located above mean high water mark,
- (e) the reinforcing of the foreshore character and respect for existing environmental conditions.

Comment:

The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	11.5m	N/A	Yes
Rear building line	N/A - FBL applies	N/A	N/A	N/A
Side building line	N: 2.5m	2.16m	13.6%	No
	S: 1m	0.9m	10%	No
Building envelope	N: 3.5m	Within envelope	N/A	Yes
	S: 3.5m	One proposed breach: - Up to 300mm, length 870mm	6.7%	No
Landscaped area	60% 1141.2m ²	46.7% 888.9m ²	22.17	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.15 Stormwater	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.2 Scenic protection - General	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	No	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D3.13 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B3.1 Landslip Hazard

The site is mapped as Geotechnical Hazard H1 and the recommendations of the geotechnical report are incorporated into the conditions of consent.

B5.15 Stormwater

Suitable stormwater management conditions are imposed in accordance with the approval of DA2020/1591.

B6.3 Off-Street Vehicle Parking Requirements

The development provides a compliant number of car parking spaces.

B8.6 Construction and Demolition - Traffic Management Plan

A Construction Traffic Management Plan (CTMP) is required to be prepared in relation to the development prior to the issue of a construction certificate and provided to all owners who benefit from the driveway. The CTMP is to detail parking and access for trades and service vehicles, management of the shared driveway and storage of goods and materials.

C1.1 Landscaping

Suitable conditions are included to ensure compliance with the relevant landscaping requirements.

C1.4 Solar Access

Compliance with control

Control C1.4 requires the retention of a minimum of 3 hours of sunlight to private open space areas and principal living area windows of adjoining properties.

At 9am there is minor additional overshadowing of the northwestern terrace of 318 Hudson Parade and partial overshadowing of an upper floor bedroom window. At 10am there is minor shadowing of the terrace and ground floor living room window. At 11am there is minor shadowing of the terrace and partial shadowing of the ground floor kitchen window. By 12pm and throughout the afternoon there is negligible additional impact to the terrace and living room windows.

Despite the relatively minor impact throughout the morning, the proposal will also result in an approximately equivalent increase in sunlight access to the terrace area of No. 318 and will maintain a compliant level of solar access in accordance with this control.

C1.5 Visual Privacy

Compliance with control

The amended design of the gym/studio and balcony maintains sufficient privacy to the adjoining property 318 Hudson Parade. Despite the proximity of the balcony to the southern boundary, the overall balcony size is reduced and an increased side setback is provided in comparison to the existing. As a result, the proposal will reduce opportunities for overlooking of the adjoining property and will maintain an equivalent level of privacy to the existing development. It is critical to note that the primary outlook from the gym/studio is to the west towards the available water views, and the southern blade wall to the balcony further restricts angled downward view lines towards the private open space of No. 318, particularly from internal areas within the gym/studio and from the southern side of the balcony.

Based on the above assessment, the proposal is considered to comply with the control and is supported.

C1.14 Separately Accessible Structures

DA2020/1591 Assessment

The approved development DA2020/1591 imposed the below condition 10 *"In order to address*

potential amenity concerns and ensure that the space is used as a non-habitable studio / gym in compliance with the control conditions".

10. Amendments to the approved plans

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

- *The sliding doors on the west elevation of the "Gym/Studio" shown on Drawing No DA 20.00 are to be replaced with windows with fixed and angled privacy screens. The glass balustrade is to be deleted.*
- *The roof over the detached garage structure shall be reduced in length by 1m to the west where it extends over the existing balcony.*
- *The change wet area shall be reduced in size and comprise a WC and shower only.*
- *There shall be no kitchen, cooking facilities or wet bar.*

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

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

Amendment of proposal:

The subject Review of Determination application seeks the deletion of this condition. Following lodgement of the application and a preliminary assessment by Council, the applicant provided amended plans to include the following changes:

- Adjusted western wall/door line to retain the balcony area as existing
- Increased southern setback to the balcony
- 520mm reduction to western eave (from 1120mm to 600mm beyond balcony line)
- Internal reconfiguration to delete bath and reduce bathroom size

Merit consideration

The amendments to the design are noted and are considered to minimise the resulting bulk and amenity impacts to the adjoining property. The roof pitch maintains a consistent appearance with the dwelling and the 600mm eave extension will not result in unreasonable bulk as viewed from the adjoining property or foreshore. The retention of the existing balcony location and provision of an increased southern side setback is considered to maintain an equivalent level of privacy to the existing development. The proposed wet bar provides amenity but does not comprise any cooking facilities or enable the use of the structure as a secondary dwelling. The imposition of a condition prohibiting the provision of cooking facilities or use of the gym/studio for separate habitation is sufficient to ensure consistency with this control.

Based on the above considerations and the amendments to the proposal, the previously imposed condition 10 is not considered necessary.

D3.7 Side and rear building line

Description of non-compliance

The control requires a minimum setback of 2.5m to one side and 1m to the other side. The proposal includes a northern setback of 2.16m and a southern setback of 0.9m.

The variations to D3.7 stipulate that where alterations and additions to existing buildings are proposed,

maintenance of existing setbacks less than as specified may be considered where it is shown that the outcomes of this clause are achieved.

Merit Assessment

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

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

The proposal has adequate regard for the desired future character of the locality and maintains consistency with surrounding development.

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

The northern side setback breach relates to the unenclosed single-storey outdoor pavilion, and will not result in excessive bulk or scale. The additions to the existing detached garage are designed to minimise the built form through previous revisions to lower the proposed roof height and pitch. The subject application has been amended to provide an increased side setback to the existing western balcony and a reduction to the previously proposed roof line above.

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

The proposed setback non-compliances will not give rise to any unreasonable view impacts to or from surrounding land.

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

The proposed works are appropriately sited to maintain views.

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

The proposed studio includes no windows to the southern boundary and the proposed side setback increase to the western balcony will improve privacy and reduce opportunities for overlooking of the adjoining property. The proposal maintains compliance with the solar access control despite the side setback breach.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

The proposed studio additions result in a minor increase to the existing detached garage footprint and will not adversely impact mature canopy trees or the streetscape.

- *Flexibility in the siting of buildings and access*

The proposal generally maintains the existing non-compliant southern side setback in accordance with the variations to this control, which is considered to be appropriate in this case.

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

The proposed studio will not adversely impact significant vegetation, and additional canopy trees are required by condition.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

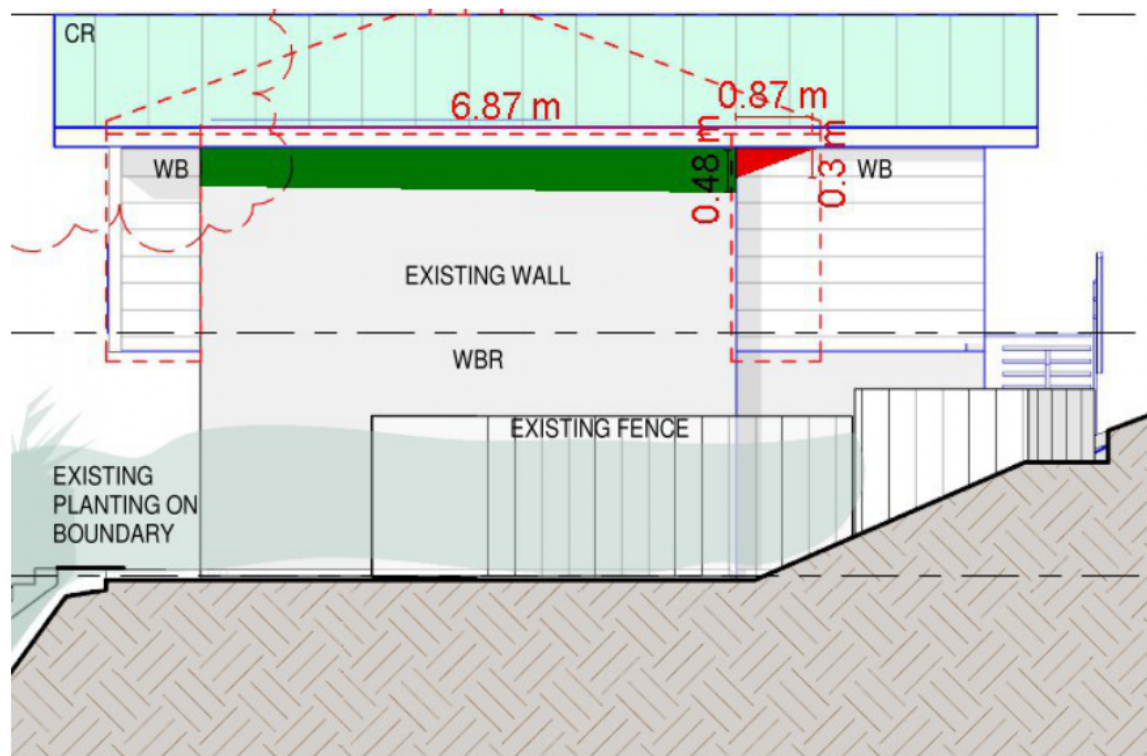
N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this control and the proposal is supported in this particular circumstance.

D3.9 Building envelope

Description of non-compliance

The proposal includes a building envelope breach at the southern elevation of the detached gym/studio. The proposed breach is limited to a maximum of 300mm for a length of 870mm (red) as indicated on the below plan. The existing southern wall and associated breach (green) remains unchanged.



Merit Assessment

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

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

The proposal maintains an appropriate relationship with surrounding development and achieves

the desired future character of the locality.

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

The proposed envelope breach is substantially separated from the street frontage, below the tree canopy and will not adversely impact the streetscape.

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

The proposed design has adequate regard for the characteristics of the site and the natural environment.

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

The proposed non-compliance is minor in extent and will not result in excessive bulk or scale. The overall bulk of the studio/gym is minimised as a result of the amended plans that increase the balcony side setback and reduce the western eave overhang.

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

The proposal will maintain views and vistas to and from surrounding land.

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

The proposal will provide an adequate level of privacy, amenity and solar access to the development site and adjoining properties. A full assessment of solar access and privacy is completed under C1.4 and C1.5.

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

The proposed breach will not adversely impact existing vegetation and conditions are imposed to provide new native tree planting.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this clause and the proposal is supported in this particular circumstance.

D3.11 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The proposed landscaped area of 46.7% is non-compliant with the 60% control, resulting in a shortfall of 252.3m².

Clause D3.11 permits a variation to the minimum landscaped area where the outcomes of the control are achieved. This variation allows for up to 6% of the total site area to be provided as impervious landscape treatments providing these areas are for outdoor recreational uses. Including such areas, a total of 138.2m² may be included as part of the landscaped area calculation.

Merit Assessment

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

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

The development achieves the desired future character of the locality and maintains the low-density landscaped setting of the site.

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

The proposed additions are appropriately designed to minimise the bulk and scale of the built form.

- *A reasonable level of amenity and solar access is provided and maintained.*

Adequate amenity and solar access are provided to the subject site and adjoining properties.

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

The proposal includes the removal of four trees, two of which are assessed as being high retention value. The remaining trees are to be retained and protected, and compensatory native tree planting is required by condition to reduce the visual impact of the development.

- *Conservation of natural vegetation and biodiversity.*

Council's Landscape and Biodiversity Officers raised no objection to the development, subject to the conditions of consent including new native planting to offset the proposed tree removal.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

The proposed reduction to the landscaped area will not unreasonably impact stormwater management, soil erosion or natural drainage channels.

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

Additional tree planting is required by conditions of consent to enhance the bushland character of the site and surrounding area.

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

Adequate landscaped area is maintained to allow for water management on the site, noting the relatively large site area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this clause and the proposal is supported in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$20,051 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,005,146.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

to be carried out.

The review application has been lodged with respect to Condition 10, which required changes to the design of the garage and gym/studio structure to restrict the potential use of the structure for separate habitation and to address associated privacy concerns with the neighbouring property. The application was supported by amended plans which in part adopt the requirements of Condition 10, or reasonably address the concerns raised, such that Condition 10 is no longer warranted.

The key planning issues considered within the assessment are the proposed building height development standard variation, built form non-compliances and amenity impacts.

Notwithstanding the proposed building height variation of 9.88%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

One submission was received generally relating to the privacy, sunlight access and visual bulk impacts of the proposal, and is addressed within the report.

The assessment of the application against the Pittwater LEP and DCP finds that the amended development is suitable in the context of the site, and is recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to REV2021/0020 for Review of Determination of Application DA2020/1591 for alterations and additions to a dwelling house and garage on land at Lot 1 DP 827733, 316 Hudson Parade, CLAREVILLE, 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
DA2.00 Site Plan	Issue 4, 10 March 2021	Baxter and Jacobson Architects
DA2.01 Site Cover / Waste Management	Issue 3, 10 March	Baxter and Jacobson

	2021	Architects
DA2.02 Site Analysis	Issue 3, 10 March 2021	Baxter and Jacobson Architects
DA10.00 Existing / Demolition - Level 1	Issue 3, 10 March 2021	Baxter and Jacobson Architects
DA10.01 Existing / Demolition - Lower Ground	Issue 1, 25 November 2020	Baxter and Jacobson Architects
DA10.03 Proposed Floor Plan - Level 1	Issue 2, 10 March 2021	Baxter and Jacobson Architects
DA10.04 Proposed Lower Ground Floor	Issue 1, 25 November 2020	Baxter and Jacobson Architects
DA10.05 Proposed Plan - Garage / Studio	Issue 7, 13 September 2021	Baxter and Jacobson Architects
DA10.06 Roof Plan - House and Pavilion	Issue 2, 10 March 2021	Baxter and Jacobson Architects
DA10.07 Roof Plan - Studio	Issue 1, 27 November 2020	Baxter and Jacobson Architects
DA10.08 Master Bedroom Level	Issue 1, 25 November 2020	Baxter and Jacobson Architects
DA20.00 Elevation West	Issue 7, 13 September 2021	Baxter and Jacobson Architects
DA20.01 Elevation South	Issue 7, 13 September 2021	Baxter and Jacobson Architects
DA20.02 Elevations East	Issue 7, 13 September 2021	Baxter and Jacobson Architects
DA20.03 Elevations North	Issue 7, 13 September 2021	Baxter and Jacobson Architects
DA30.03 House - Section	Issue 2, 27 November 2020	Baxter and Jacobson Architects
DA30.05 Long Site Section	Issue 4, 10 March 2021	Baxter and Jacobson Architects
DA30.11 Section - Pavilion - AA & BB	Issue 1, 25 November 2020	Baxter and Jacobson Architects
DA30.20 Section - Garage / Studio CC & DD	Issue 7, 13 September 2021	Baxter and Jacobson Architects

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	26 November 2020	Naturally Trees
Geotechnical Assessment, Ref: J2990	27 November 2020	White Geotechnical Group
BASIX Certificate No. A398970	25 November 2020	Leith Schmidt Architect

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 Report	25 November 2020	Mark Baxter

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

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

2. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$20,051.46 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 \$2,005,146.00.

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.

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

6. Tree Root Investigation

Prior to the issue of a Construction Certificate a tree root mapping investigation as recommended in the Arboricultural Impact Assessment shall be conducted for the existing tree identified as tree number 1 (Grey Gum). The tree root investigation shall be undertaken along the edge of alignment of excavation works within the site to locate any woody structural roots and provide recommendations for tree sensitive measures to be implemented.

An Arborist with minimum AQF Level 5 in arboriculture shall supervise the works to verify tree root locations. A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.

The root investigation shall map existing roots of significance that must not be impacted by construction works. The tree root investigation shall be conducted to confirm the following data to be used for the location/alignment of any new proposed works:

- i) confirmation of the location of any tree roots at or >25mm (Ø) diameter to areas that require excavation for proposed works. Alternative alignment of proposed works shall be provided as necessary to avoid major roots, and
- ii) mapping of the suitable location/alignment of proposed works.

The Tree Root Map shall be issued to a qualified Structural Engineer as a basis for structural design, and for determining the final location/alignment and construction methodology of proposed works within the tree protection zone (TPZ).

Prior to the issue of a Construction Certificate, the Arborist shall provide certification to the Certifying Authority that the tree root investigation and arboricultural recommendations have been adequately addressed in the Construction Certificate plans.

Reason: To ensure protection of vegetation proposed for retention or adjacent to the site.

7. Landscape Plan

A Landscape Plan is to be prepared which includes a minimum of 80% locally native species as a proportion of the total number of plants. Locally native species are to be consistent with Pittwater Spotted Gum Forest - Endangered Ecological Community found here: <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/1996-1999/pittwater-spotted-gum-forest-endangered-ecological-community-listing#:~:text=The Scientific Committee, established by,Schedule 1 of the Act.>

Planting is to include at least three (3) *Eucalyptus punctata* to offset proposed tree removal associated with the DA.

The Landscape Plan is to be prepared by a suitably qualified landscape architect and provided to the Certifying Authority prior to issue of the Construction Certificate.

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

8. **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.

9. **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.

10. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR ENGINEERING DEVELOPMENT POLICY. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

11. **Geotechnical Report Recommendations have been Incorporated into Designs and**

Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White geotechnical report dated 27 November, 2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. Vehicle Driveway Gradients, parking and vehicular turning area

The Applicant is to ensure driveway gradients, vehicular turning area and parking within the private property are to be designed in accordance with AS/NZS 2890.1:2004. A Civil Engineer certify compliance with the Australian standards.

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

Reason: To ensure suitable vehicular access to private property.

13. Construction Traffic Management Plan

The Applicant is to submit an Construction Traffic Management Plan ('CTMP') to Council for approval prior to issue of the Construction Certificate. The CTMP shall be prepared by an appropriately certified person and is to detail:

- Parking of trades and service people,
- Size, weight, dimensions and frequency of truck movements along the driveway,
- Management of driveway, noting shared use of the driveway,
- Storage of goods and materials.

Once approved, copies of the CTMP are to be furnished to all property owners who benefit from the driveway for their records. This is to occur at least 7 days prior to the commencement of any works on site.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**14. Project Arborist**

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

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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment near existing tree numbers 1, 10, 19 and 20, and in particular:

- i) appendix 7 - schedule of works and responsibilities,
- ii) appendix 8 - tree management plan

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.

15. **Tree Removal Within the Property**

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

- i) tree 11, Grey Gum
- ii) tree 14 - Native Frangipani
- iii) tree 17 - Grey Gum, subject to tree replacement
- iv) tree 18 - Red Bloodwood, subject to tree replacement

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

Reason: To enable authorised building works.

16. **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.

17. **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

18. Tree and Vegetation Protection

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

- of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.
- c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

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

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

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

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

20. **Demolition Works - Asbestos**

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

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

disposed to a lawful waste disposal facility.

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

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

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

21. Installation and Maintenance of Sediment Control

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

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

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

22. Required Tree Planting

Trees shall be planted in accordance with the following:
1 x Eucalyptus punctata (Grey Gum) at 75 litre container size
1 x Corymbia gummifera (Red Bloodwood) at 75 litre container size

Tree planting shall be located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings and other trees. Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight or where the proposed tree location may impact upon significant views.

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

Reason: To maintain environmental amenity.

23. Certification of Landscape Plan

Landscaping is to be implemented in accordance with the approved Landscape Plans 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.

24. **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.

25. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

26. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

28. **Replacement of Canopy Trees**

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

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

Reason: To replace locally native trees.

29. **Geotechnical Report**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be complied with in perpetuity.

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **Gym/Studio**

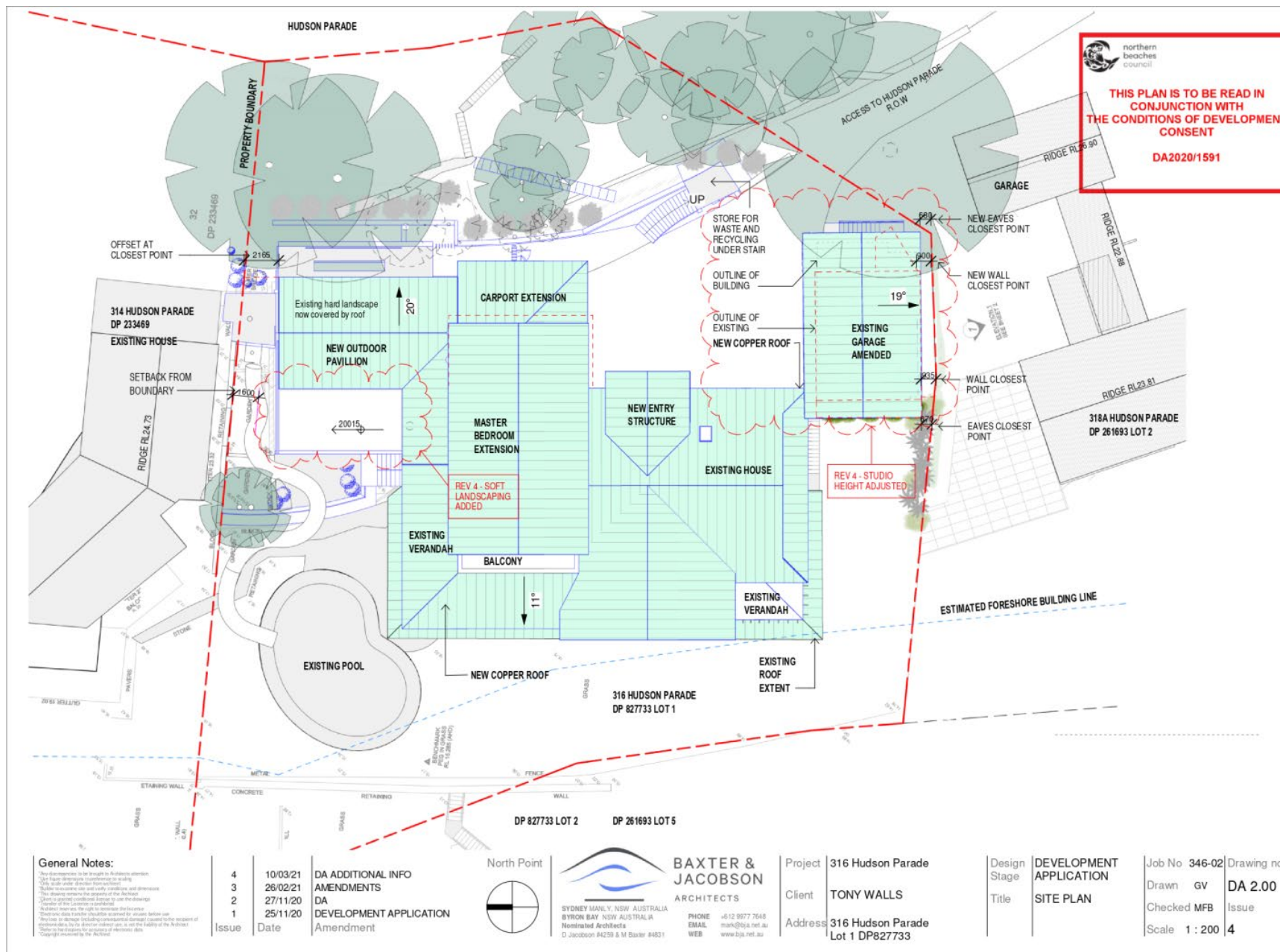
The 'Gym/Studio' and all other associated areas located on the Studio Plan are not to be used for the purposes of separate habitation (i.e. secondary dwelling or similar). The use of cooking facilities, including an oven and stove are prohibited.

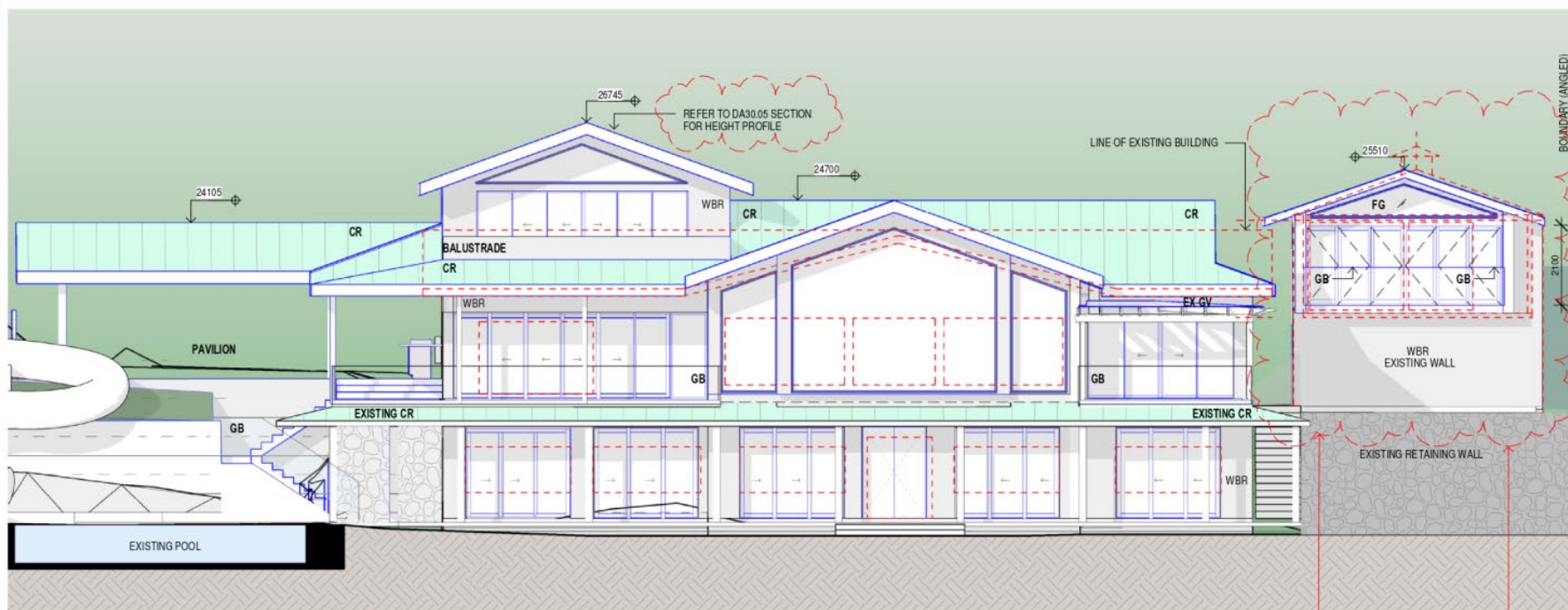
Reason: To ensure consistency with the approved development and stamped plans.

31. **Noise from use of gym / studio**

Noise associated with the use of the studio / gym is not to be offensive as defined by the Protection of the Environment Operations Act 1997.

Reason: To maintain the amenity of surrounding properties.





ELEVATION - WEST - 1 TO 100

1 : 100 @ A3

REV 4 - HEIGHT REDUCED
TO MATCH EXISTING.
EXISTING WALL OF
GARAGE RETAINED

REV 7 - GLAZING WALL
RECESSED TO CREATE
BALCONY. SIDE OF
BALCONY RECESSED
FROM SIDE BOUNDARY

LEGEND:

- EX CR - EXISTING COPPER ROOF
CR - COPPER ROOF
WBR - BRICK PAINTED WHITE
WB - WHITE WEATHER BOARDS
EX CG - EXISTING COPPER GUTTER
CG - COPPER GUTTER
EX GV - EXISTING GLASS VERANDAH
GB - GLASS BALUSTRADE

NOTES:

- CHECK ALL DIMENSIONS ON SITE
- WINDOWS AND DOORS ARE TIMBER FRAMED, SINGLE CLEAR GLAZING GENERALLY

General Notes:

General Notes:

- *Any discrepancies to be brought to Archivist attention
- *Take figure displays (reference) to scaling
- *Only scale under direction from Archivist
- *Bubble to examine size and verify conditions and dimensions
- *This drawing retains the property of the Archivist
- *Given to approved conditions, license to use the drawings
- *Transfer of the License is prohibited
- *Archivist reserves the right to terminate the license
- *Electronic data transfer shall be scanned for viruses before use
- *Any loss or damage (including consequential damage) caused to the recipient of electronic data, by its direct or indirect use, is not the liability of the Archivist
- *When no display is available, the use of electronic data
- *Copyright reserved by the Archivist

7	13/09/21	DA REVIEW ADDITIONAL INFO
6	-	-
5	13/9/21	CLIENT SKETCH PLAN
4	10/03/21	DA ADDITIONAL INFO
Issue	Date	Amendment



SYDNEY MANLY, NSW AUSTRALIA
BYRON BAY NSW AUSTRALIA
Nominated Architects
D Jacobson #4258 & M Baxter #4831

BAXTER &
JACOBSON
ARCHITECTS

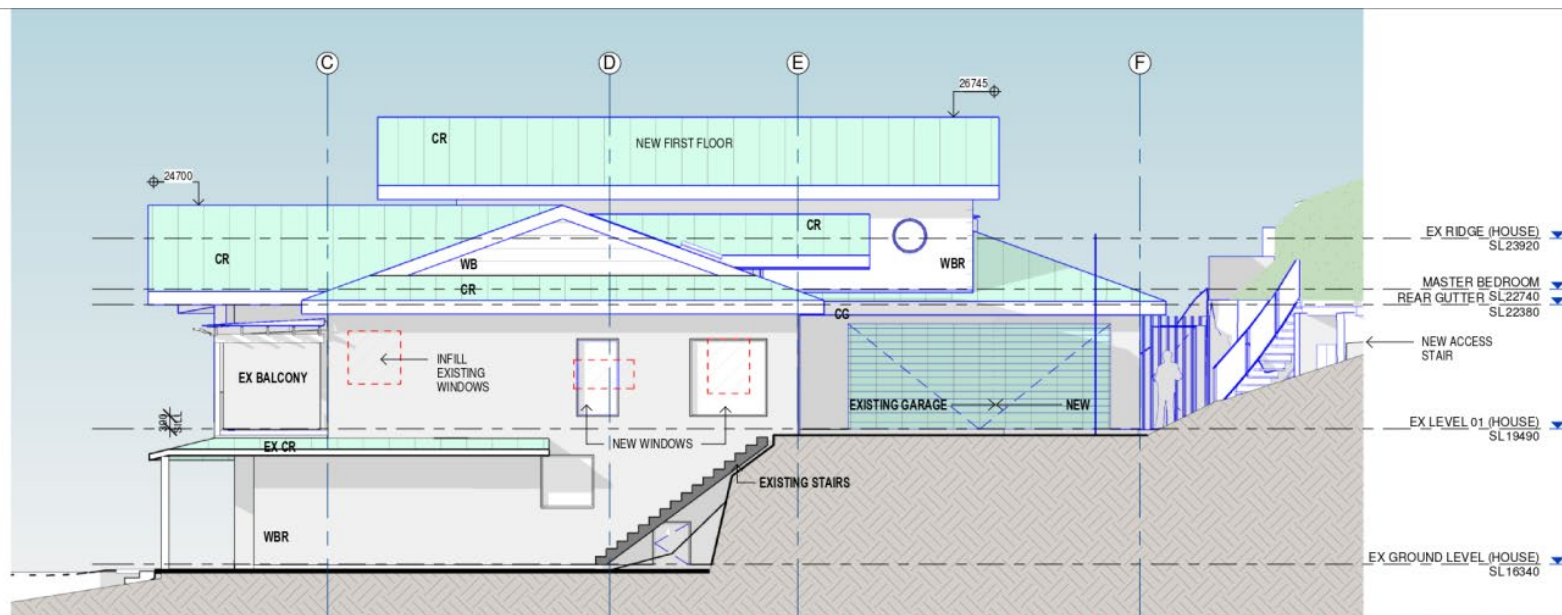
PHONE +612 9977 7648
EMAIL mark@bjr.net.au
WEB www.bjr.net.au

Project	316 Hudson Parade
Client	TONY WALLS
Address	316 Hudson Parade Lot 1 DP827733

Design Stage	DEVELOPMENT APPLICATION
Title	ELEVATION WEST

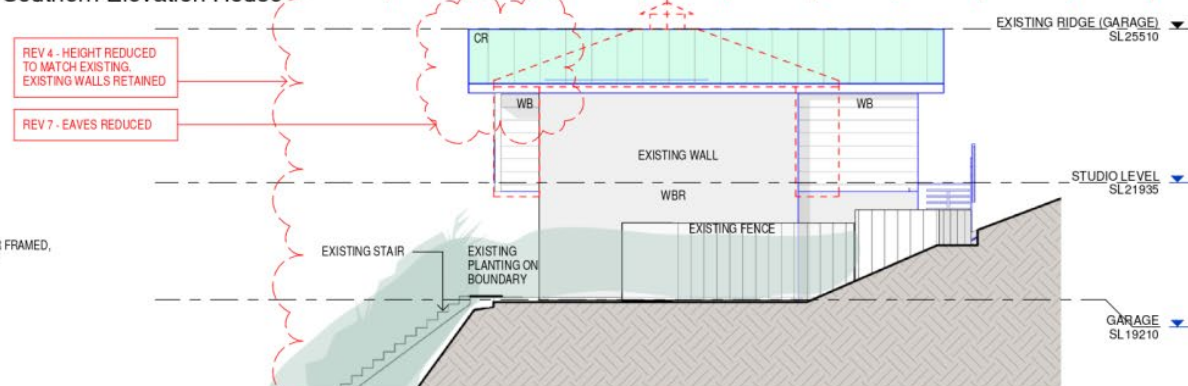
Job No	346-02	Drawing no.
Drawn	GV	DA 20.00
Checked	LS	Issue
Scale	As indicated	7

13/09/2021 5:03:44 PM



Proposed Southern Elevation House

1:100 @ A3



Proposed Southern Elevation - Studio

1 : 100 @ A3

General Notes:

- General Notes:**
- *Any discrepancies to be brought to Architect's attention:
the figure dimensions in parenthesis to writing
 - *Only scale under divider from top left corner
 - *Builder to examine each and verify dimensions and dimensions
 - *This drawing remains the property of the Architect
 - *Client is assigned conditions: license to use the drawings
 - *Number of the License is 10000000
 - *Architect reserves the right to terminate the license
 - *Electronic data transfer shall be made for: various before use
 - *Any loss or damage (including consequential damage) caused to the recipient is accepted by the client or user and is not the liability of the Architect
 - *Refer to the drawings for accuracy of electronic data
 - *Copyright reserved by the Architect

NOTES:

- CHECK ALL DIMENSIONS ON SITE
- WINDOWS AND DOORS ARE TIMBER FRAMED, SINGLE CLEAR GLAZING GENERALLY

7	13/09/21	DA REVIEW ADDITIONAL INFO
6	-	-
5	-	-
4	10/03/21	DA ADDITIONAL INFO
Issue	Date	Amendment



BAXTER &
JACOBSON
ARCHITECTS

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| Project | 316 Hudson Parade

Client	TONY WALLS
--------	------------

Address 316 Hudson Parade
Lot 1 DP827733

Design Stage	Title
--------------	-------

DEVELOPMENT
APPLICATIONELEVATION-
SOUTH

|Job No 346-02|

Drawn

Scale As indicated

02| Drawing no.

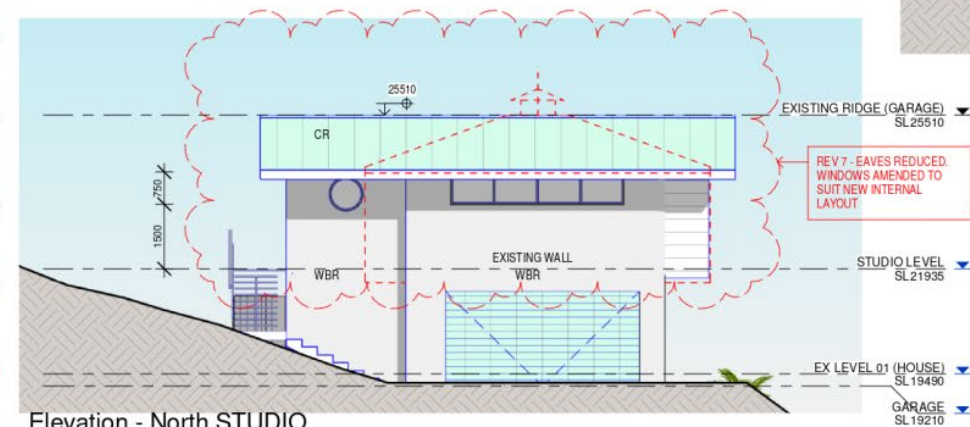
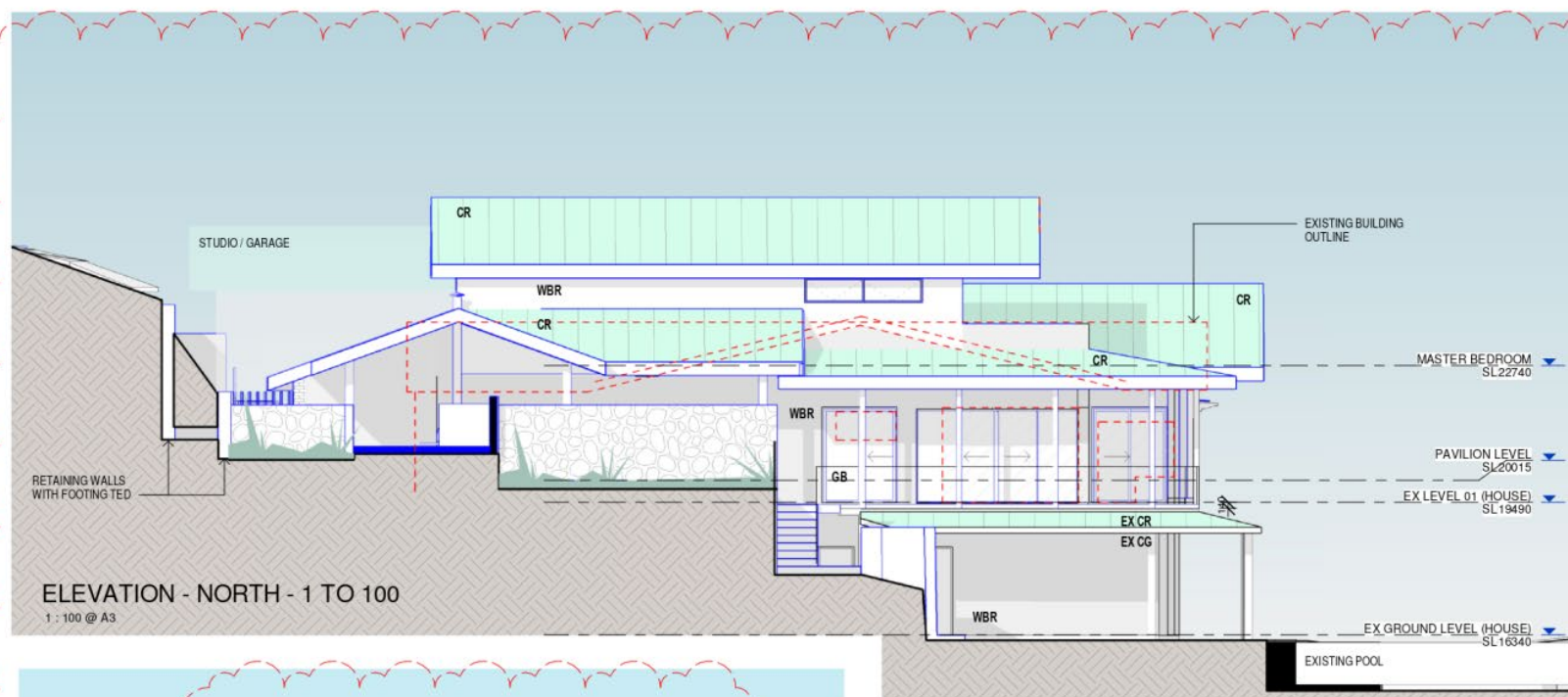
DA 20.01

Issue

7

13/09/2021 5:03:46 PM





REV 2 - HEIGHT REDUCED
TO MATCH EXISTING.
EXISTING WALLS RETAINED
EXISTING GROUND LINE
AND MAX HEIGHT MOVED
TO DA30.05 LONG SECTION
FOR CLARITY

LEGEND:

EX CR - EXISTING COPPER ROOF
CR - COPPER ROOF
WBR - BRICK PAINTED WHITE
WB - WHITE WEATHER BOARDS
EX CG - EXISTING COPPER GUTTER
CG - COPPER GUTTER
EX GV - EXISTING GLASS VERANDAH
GB - GLASS BALUSTRADE

NOTES:

- CHECK ALL DIMENSIONS ON SITE
- WINDOWS AND DOORS ARE TIMBER FRAMED, SINGLE CLEAR GLAZING GENERALLY

General Notes:

General Notes:

- *Any discrepancies to be sought by Architect's attention
- *All figure dimensions in accordance to scaling
- *Only scale under direction from architect
- *Builder to assume site and verify conditions and dimensions
- *This drawing reserves the property of the Architect
- *Client is granted conditional license to use the drawings
- *Transfer of the License is prohibited
- *Architect reserves the right to terminate the license
- *Electronic data transfer shall be scanned or viewed before use
- *Any loss or damage (including consequential damage) caused to the recipient of the electronic data, by its direct or indirect use, is not the liability of the Architect
- *Seller is not discharging the liability of electronic data
- *General exception to the Architect

7	13/09/21	DA REVIEW ADDITIONAL INFO
6	-	-
5	-	-
4	-	-
Issue	Date	Amendment



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JACOBSON
ARCHITECTS

Project	316 Hudson Parade
Client	TONY WALLS
Address	316 Hudson Parade Lot 1 DP827733

Design Stage	DEVELOPMENT APPLICATION
Title	ELEVATIONS - NORTH

Job No	346-02	Drawing no.
Drawn	GV	DA 20.03
Checked	MFB	Issue
Scale	As indicated	7

13/09/2021 5:03:55 PM

Clause 4.6 request – building height control

Request for exception under clause 4.6 of Pittwater Local Environmental Plan 2014 to clause 4.3(2) of *Pittwater Local Environmental Plan 2014*

Premises: No. 316 Hudson Parade, Clareville

Proposal: Alterations and additions to existing dwelling house and construction of a secondary dwelling.

Control: Maximum building height

Clause 4.3(2) of PLEP 2014 provides that the maximum building height on the subject site is 8.5 metres.

The following definitions from PLEP 2014 are relevant:

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,*

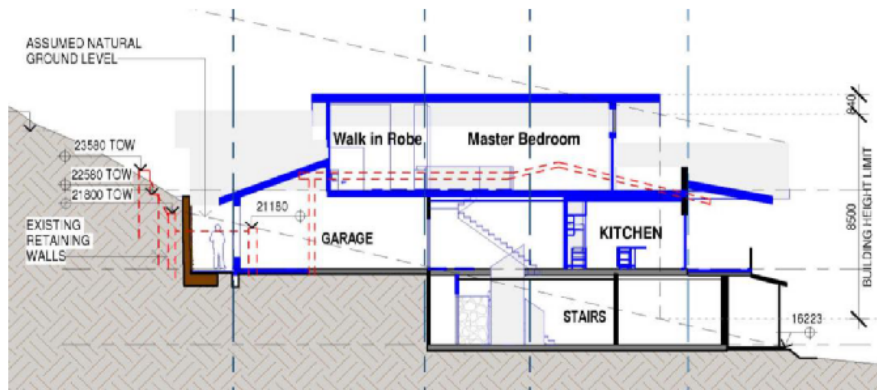
including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

ground level (existing) means *the existing level of a site at any point.*

Extent of variation:

The proposed alterations and additions have a maximum building height of 9.31m, representing a variation of 840mm or 9.88%. The variation is limited to a small part of the western end of the gable roof ridge over the proposed upper level of the building.

The ground levels have been altered historically and so the “existing ground level” for the purposes of measuring the building height has been interpolated, consistent with the judgement of the Land and Environment Court in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189. Existing ground levels were identified using spot levels shown on the detail survey prepared by Lockley Registered Surveys (Drawing No 43725DT), being the ground level to the west of the dwelling house (RL16.223) and the east of the dwelling house (RL21.18), and verified by geotechnical information provided by White Geotechnical Services:



Introduction:

Clause 4.6(1) of PLEP 2014 states:

(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.*

To utilise the flexibility provided by clause 4.6 of PLEP 2014 it is necessary for the applicant to demonstrate:

- (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.*

In addition, Council must 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.*

In exercising delegation from the Director-General of the Department of Planning, Council 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.*

This clause 4.6 request has been structured in accordance with the approach adopted by the Court in *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46 and also considers the ways in which a SEPP 1 objection can be sustained as listed in *Webhe v Pittwater Council* [2007] NSWLEC 827 at [26] and the judicial guidance provided in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

1. Is the planning control in question a development standard?

Clause 4.3 of PLEP 2014 is attached as Appendix 1

The definition of “*development standards*” in Section 4(1) of the *Environmental Planning and Assessment Act 1979* is attached as Appendix 2.

Clause 4.3(3) contains a development standard because it fixes a requirement for the height of a building.

2. What is the underlying object or purpose of the standard?

The underlying objects of the standard are stated in clause 4.3(1) to be:

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

3. Is compliance with the development standard consistent with the objectives of clause 4.6?

- Compliance would necessitate an inflexible application of the development standard in circumstances where the development otherwise satisfies the objectives of the control.
- Compliance would not achieve a better outcome from the development of the land because it would result in a dwelling house with less internal amenity compared to the proposal.

4. Does non-compliance with the development standard raises any matter of significance for State or regional environmental planning?

No.

5. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the development standard is unreasonable and unnecessary for the following reasons:

5(a). Achievement of the underlying objectives of the standard

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

Comment: For the reasons discussed in the Statement of Environmental Effects, the proposal is consistent with the desired character of the D3 Bilgola locality.

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

Comment: The building generally complies with the 8.5m building height control that applies to the land. The site is relatively large (1903m²) and the variation is sited in the middle of the site, mitigating its apparent height and scale.

- (c) *to minimise any overshadowing of neighbouring properties,*

Comment: The proposed variation to the building height control does not result in any overshadowing of neighbouring properties.

- (d) *to allow for the reasonable sharing of views,*

Comment: The proposed variation of the building height control does not result in any impact on views from neighbouring properties. Dwellings on the eastern side of Hudson Parade are sited well above the subject site such that views over the property are unimpeded. There are no cross views over the site from neighbouring properties.

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

Comment: The building steps down the slope of the land, with the basement level occupying the western portion of the building footprint.

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

Comment: The proposed variation to the building height control has no impact on the natural environment. The site does not contain a heritage item, is not in the vicinity of any heritage items, and is not within a conservation area.

5(b). Is the standard relevant to this development?

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

5(c). Would the underlying objective be defeated or thwarted if compliance was required?

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

5(d). Has the development standard been abandoned or destroyed by Council's own actions?

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

5(e). Is the zoning of the particular land unreasonable or inappropriate?

The applicant does not rely upon this method of demonstrating that compliance with the development standard is unreasonable or unnecessary.

6. Are there sufficient environmental planning grounds to justify varying the development standard?

The following environmental planning grounds justify the proposed variation:

- (a) The building generally complies with the building height control, with the variation relating only to a small part of the roof ridge.
- (b) The variation to the building height control is located centrally within a relatively large site. As a result, the distance of the roof ridge from the neighbouring properties, the street and the foreshore mitigate potential impacts such as impacts on views, overshadowing, streetscape, and impacts related to the bulk and scale of buildings.
- (c) The proposed variation occurs because the building has been designed to maintain the existing gabled roof form so as to maintain the character of the building and its contribution to the character of the area. A different roof form could be adopted that would comply with the control (eg: a hipped or flat roof form) but this would have no identifiable environmental benefit and would be to the detriment of the character of the area and the architectural consistency of the building.

7. Is the proposal consistent with the objectives of the zone?

The site is zoned E4 Environmental Living. The objectives of the zone are:

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

Comment: The proposal is for low-impact residential development.

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

Comment: The proposal has no identifiable impact on the ecological, scientific or aesthetic values of the area.

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

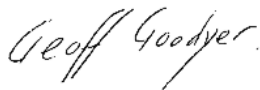
Comment: The site is relatively large (1,903m²) and the proposed development of a dwelling house and secondary dwelling represents low density development. The scale of development is appropriate for the site. The building steps down with the slope of the land and site landscape ensures that the building is integrated into the landscape.

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

Comment: The proposal has no impact on riparian and foreshore vegetation or on wildlife corridors.

8. Is the exception request well founded?

For the reasons given above the exception request is considered to be well founded.



Geoff Goodyer
18 March 2021

Appendix 1

Clause 4.3 of PLEP 2014

4.3 Height of buildings

- (1) The objectives of this clause are as follows—
- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
 - (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
 - (c) to minimise any overshadowing of neighbouring properties,
 - (d) to allow for the reasonable sharing of views,
 - (e) to encourage buildings that are designed to respond sensitively to the natural topography,
 - (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.
- (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.
- (2A) Despite subclause (2), development on land—
- (a) at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and
 - (b) that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map,
- may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.

Appendix 2

Definition of “development standards”

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.

ITEM 3.4

**MOD2021/0490 - 156 WHALE BEACH ROAD, WHALE BEACH -
MODIFICATION OF DEVELOPMENT CONSENT DA2020/1080
GRANTED FOR ALTERATIONS AND ADDITIONS TO A
DWELLING HOUSE.**

REPORTING MANAGER

TRIM FILE REF 2021/695871

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 PLEP 2014 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** Mod2021/0490 for Modification of Development Consent DA2020/1080 granted for alterations and additions to a dwelling house on land at Lot B DP 355059, 156 Whale Beach Road, Whale Beach, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0490
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot B DP 355059, 156 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Modification of Development Consent DA2020/1080 granted for alterations and additions to a Dwelling House
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Simon Anderson Rothery Alison Jane Rothery
Applicant:	Susan Rothwell Architects
Application Lodged:	15/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/07/2021 to 10/08/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 12.9%
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposed modification is for the addition of a steel framed retractable pergola over the existing first floor terrace. The original development application DA2020/1080 was determined by Development Determination Panel (DDP) due to it having a variation of 16.5% for the building height. The proposal is being sent to DDP due to the additional building height non-compliance. The works result in a variation to the Height of Buildings development standard of the Pittwater Local Environment Plan 2014 (PLEP 2014) of 12.9%. Despite the numeric noncompliance, the proposal is not considered to result in unreasonable bulk, scale or unreasonable amenity impacts to the adjoining or surrounding properties.

The proposed development also results in technical non-compliance with the Building Envelope under the Pittwater 21 Development Control Plan (P21DCP). However, this non-compliance does not result in

adverse amenity impacts and is consistent with the objectives of the control and are therefore supported.

The application is referred to the Development Determination Panel for determination due to the contravention of the Height of Buildings development standard exceeding 10%.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent DA2020/1080 with the construction of a steel framed retractable pergola over the existing first floor terrace.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

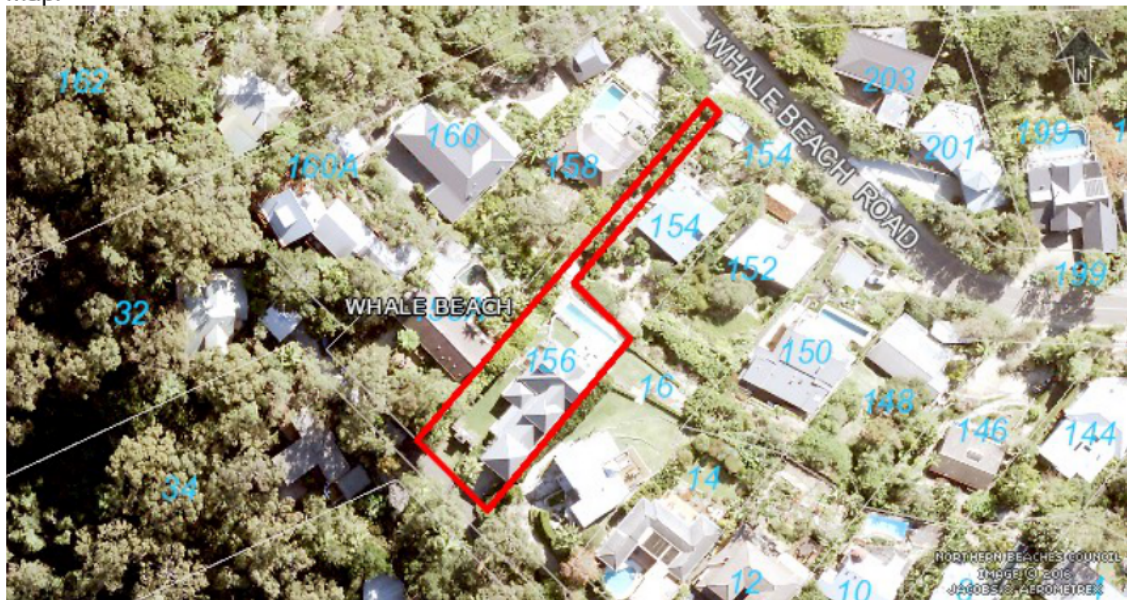
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater 21 Development Control Plan - D12.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot B DP 355059 , 156 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	<p>subject site consists of one allotment located on the south-western side of Whale Beach Road.</p> <p>The site is irregular in shape with a frontage of 4.3m along Whale Beach Road and a depth of 96m. Vehicular</p>

	<p>access is gained via a right of carriage way to the rear of the property via Beauty Drive.</p> <p>The site has a surveyed area of 1181m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates an existing two to three storey dwelling house that is currently under construction.</p> <p>The site contains a variety of hedging along the side boundaries.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u></p> <p>Adjoining and surrounding development is characterised by similar two to three storey residential dwelling houses.</p>
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Map:



SITE HISTORY

DA2020/1080 was approved by the Development Determination Panel 12/11/2020.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the

- development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/1080, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/1080 for the following reasons:</p> <ul style="list-style-type: none"> The proposed modifications will not substantially alter the external appearance of the building. The proposed modifications will not affect compliance with major development standard and development controls (e.g. landscaped area, setbacks, building height, etc.) that were previously approved as part of the original approval. The proposed modifications will have no additional impact on surrounding sites nor the public domain (i.e. in terms of view loss, visual privacy, solar access, visual amenity, etc.). Subject to compliance with previously imposed conditions, the proposed modifications will have no additional impact on the natural environment nor hazards which affect the site.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval	Development Application DA2020/1080 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environmental Plan 2011 and Pittwater 21 Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development

Section 4.15 'Matters for Consideration'	Comments
Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/07/2021 to 10/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

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

Comment:

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.9m	Pergola - 9.6m	12.9%	No

Compliance Assessment

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

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.6m
Percentage variation to requirement:	12.9%

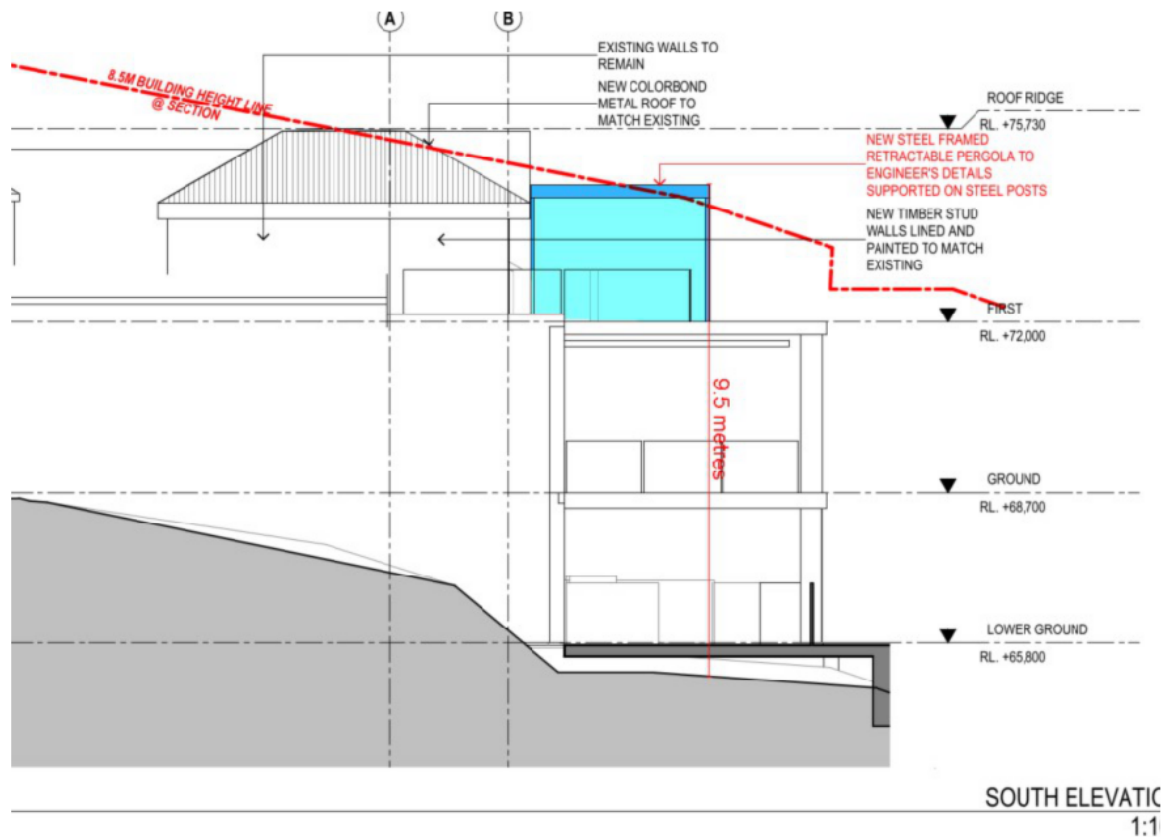


Image 1: Building height non-compliance

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorizes the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the E4 Environmental Living zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

Compliance with the height of buildings development standard is considered unnecessary in this case for the following reasons:

- The proposed modification includes the retention of the existing dwelling roof, and the addition of a pergola over the first floor terrace.
- The proposed pergola sits below the height of the approved roof form with an RL of 74.65.
- The proposed pergola is an open structure that has minimal bulk and scale.
- The non-compliance will result in no unreasonable amenity impacts.

There are sufficient environmental planning grounds to justify contravening the development standard,

Comment:

An assessment of the proposed modification has concluded that there are sufficient environmental planning grounds for the variation:

- The height of the proposed pergola is lower than that of the approved roof,
- The non-compliance relates almost entirely to the first floor terrace roof, the purpose of which is to provide weather/sun protection to the terrace,
- The weather protection from the roof increases the usability of the terrace and the overall amenity of the dwelling.

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.

4.3 Height of buildings

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

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

Comment:

The proposed development is generally consistent with the approved dwelling and maintains the desired character of the locality.

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

Comment:

The proposed modification results in a reduction to the height and scale of the approved development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed change to the approved roof will result in a small increase in overshadowing of neighbouring properties, however, this still complies with the requirements of the PDCP.

d) to allow for the reasonable sharing of views,

Comment:

The proposed pergola will not result in any unreasonable view impacts.

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

Comment:

The modification is within the building footprint and responds sensitively to the natural topography.

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

Comment:

The proposed modification is a open structure that has minimal visual impact of the development.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

The proposed modifications relate to alterations and additions to an existing dwelling.

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

Comment:

The proposed works are generally minor and will not have an adverse impact on the above values.

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

Comment:

The development is of an appropriate scale and density, and the changes to the upper floor respond to the landform and landscape.

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

Comment:

The proposed modifications will not unreasonably impact riparian and foreshore vegetation or wildlife corridors.

Conclusion:

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

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

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

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Rear building line	6.5m	7.1m	unaltered	Yes
Side building line	North-west - 2.5m	7.3m	unaltered	Yes
	South-east - 1m	2.1m	unaltered	Yes
Building envelope	North-west - 3.5m	Within envelope	unaltered	Yes
	South-east - 3.5m	Outside envelope	Outside envelope	No
Landscaped area	50%	58.7%	unaltered	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D12.8 Building envelope

Description of Non-Compliance

The proposed pergola does not meet the side boundary envelope requirements on the southern elevation. It should be noted that the existing dwelling does not comply with the side boundary envelope.



Image 2: Side Boundary Envelope Encroachment - East Elevation

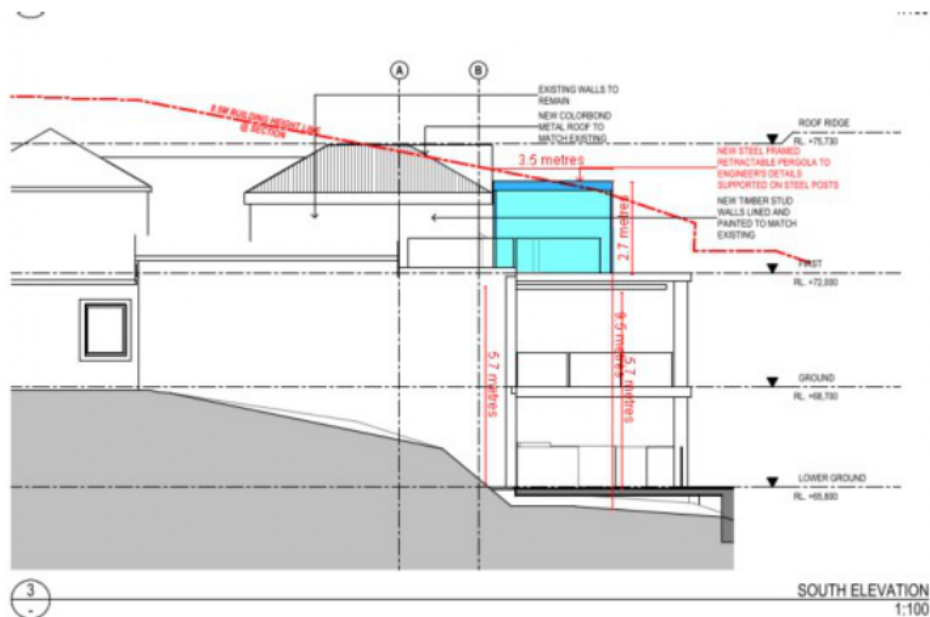


Image 3: Side Boundary Envelope Encroachment - South Elevation

Merit Assessment

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

- *To achieve the desired future character of the Locality.*
Comment:
The proposal will maintain the desired future character of the Palm Beach locality.
- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*
Comment:
As with DA2020/1080, when viewed from the right of way, the proposal will be viewed as being two storey. From Whale Beach Road the dwelling is sited at a great distance being a rear allotment of a battleaxe block arrangement. The proposed pergola is an open structure, that will sit well below that of the approved roof form is of a scale that is consistent with the natural environment.
- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*
Comment:
The proposed pergola is an open structure that will not adversely affect the existing streetscape and is consistent with the existing built form. The proposal appropriately relates to the spatial characteristics of the existing dwelling, nearby dwelling and the natural environment.
- *The bulk and scale of the built form is minimised.*
Comment:
The proposal is a open pergola over an existing first floor terrace. The open nature of the

pergola has minimal bulk and scale.

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

Comment:

Views to and from public and private places will not be impacted by the proposal.

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

Comment:

The proposal maintains a reasonable level of privacy, amenity, and solar access to the residents of the subject site and the residents of the adjoining properties.

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

Comment:

No vegetation or landscaping is proposed for removal as part of this application.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

In summary, as addressed within this assessment report, the proposed development does not comply with clause 4.3 Height of Buildings under PLEP 2014. Due to the application being made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, the application does not rely upon having a Clause 4.6 variation in order to determine the modification application. While a Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the E4 Environmental Living zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and considered acceptable in this instance.

The proposal also includes a variations to clause D12.8 Building Envelope of P21 DCP. This non-compliances have been assessed and considered acceptable in this instance.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0490 for Modification of Development Consent DA2020/1080 granted for alterations and additions to a Dwelling House on land at Lot B DP 355059,156 Whale Beach Road, WHALE BEACH, subject to the conditions printed below:

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

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

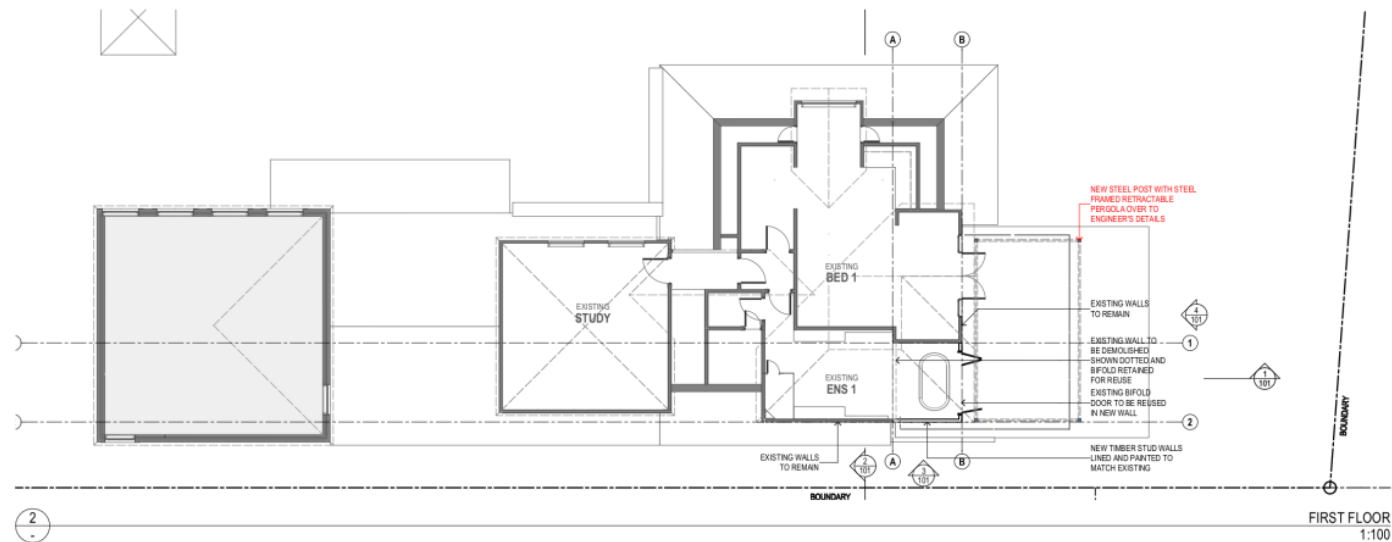
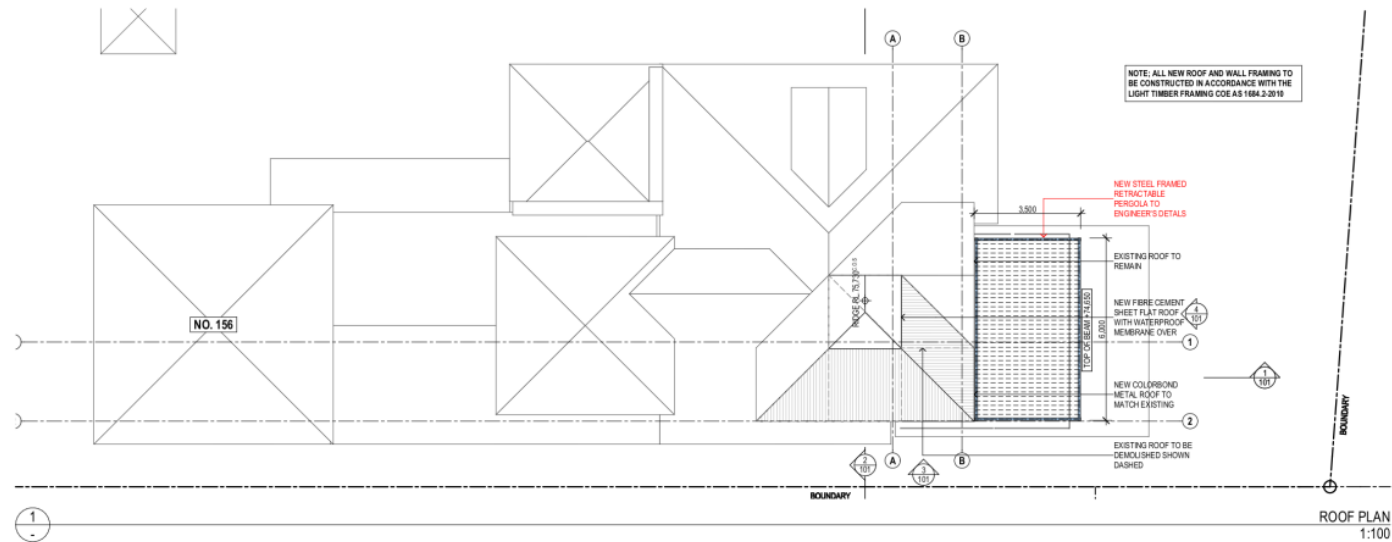
a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA100 - Issue C	17/06/21	Susan Rothwell Architects
DA101 - Issue C	17/06/21	Susan Rothwell Architects

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

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

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



**SUSAN ROTHWELL
ARCHITECTS**

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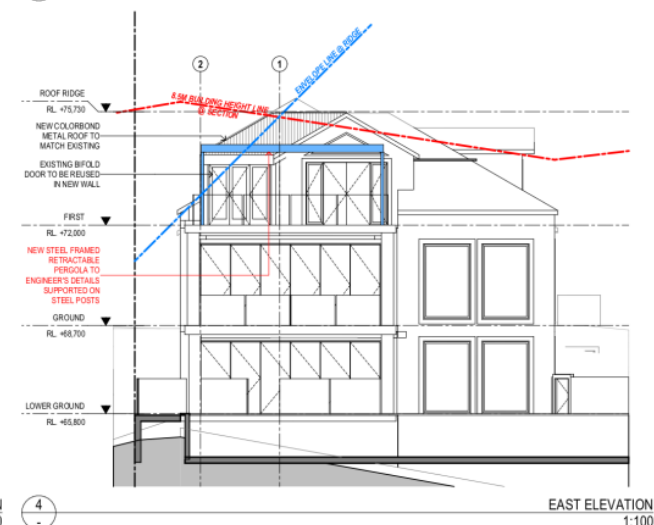
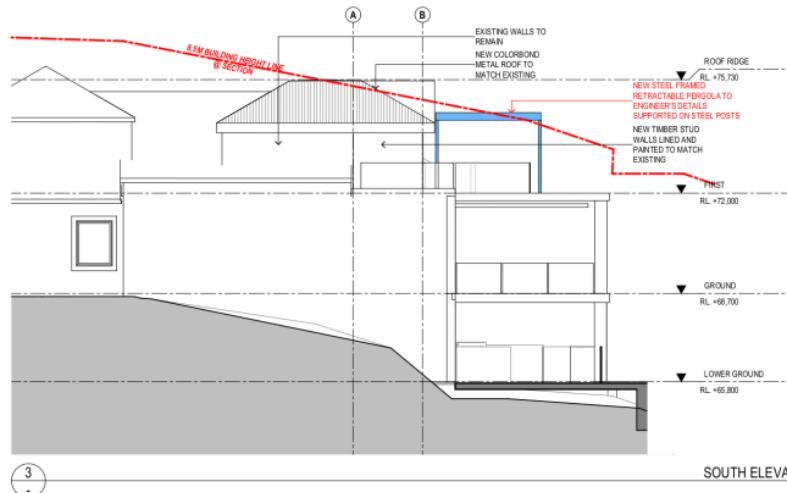
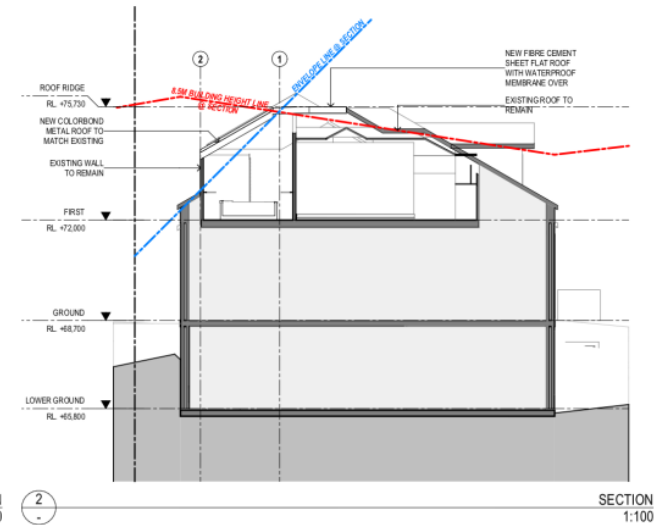
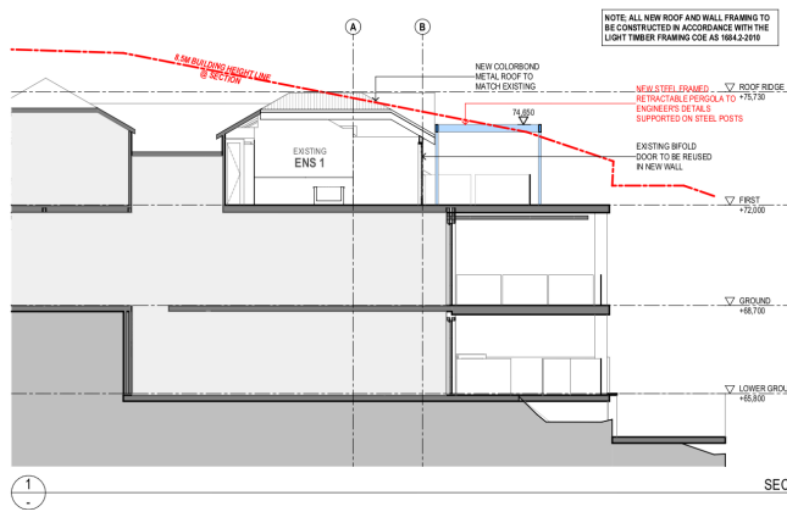
**ALTERATIONS AND
ADDITIONS**
AT 156 WHALE BEACH RD,
WHALE BEACH
LOT B / DP 355059
FOR ALISON ROTHERY

ISSUE

A. FOR DA SUBMISSION
(06/20)
B. FOR CC
(06/21)
C. FOR 4.55 SUBMISSION
(06/21)

PLANS

SCALE	1:100@A2
DATE	17/06/21
JOB NO.	SRWBR
DWG. NO.	DA100
ISSUE	C



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**ALTERATIONS AND ADDITIONS
AT 156 WHALE BEACH RD, WHALE BEACH
LOT B / DP 355059
FOR ALISON ROTHERY**

SECTIONS AND ELEVATIONS

C: FOR A30 SUBMISSION (1:100)
B: FOR C.C. SUBMISSION (1:100)
A: FOR DA SUBMISSION (1:100)
ISSUE

SCALE:
DATE:

1:100 (B2)
17/06/21

PROJECT: SRWBR
DWG NO: DA101
ISSUE: C

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WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

156 WHALE BEACH ROAD, WHALE BEACH

FOR PROPOSED ADDITIONS & ALTERATIONS TO AN EXISTING DWELLING

For: For proposed additions and alterations to an existing dwelling
At: 156 Whale Beach Road, Whale Beach
Owner: Alison Rothery
Applicant: Susan Rothwell Architects

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 4.3 restricts the height of a building in this locality to a maximum of 8.5m.

The proposed additions and alterations to the existing dwelling comprise the provision of a new steel framed retractable pergola over the existing open terrace adjoining the eastern façade of the first floor bedroom. The proposed pergola will provide a height of up to 8.9m above natural ground level and exceed Council's maximum building height of 8.5m by 0.4m or 4.7%. The extent of the building's roof which exceeds the 8.5m height control is detailed in Figure 1 (over page).

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is clause 4.3 of PLEP 2014 a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act in standards fixed respect of an aspect of the development includes:

"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,"

- (b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

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3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been considered in this request for a variation to the development standard.

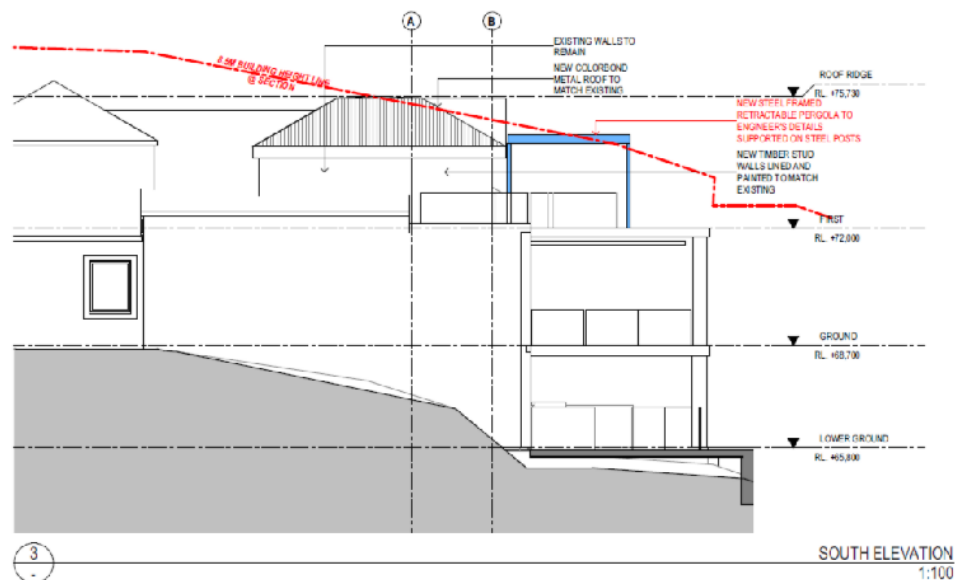


Fig 1: Section extract to indicate area of dwelling roof exceeding the 8.5m height control

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4.0 Objectives of Clause 4.6

Clause 4.6(1) of PLEP provides:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

- (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.*

Clause 4.3 (the Maximum Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the PLEP.

Clause 4.6(3) of PLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development*

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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.

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Whale Beach. The additions to the existing dwelling to provide for the open steel retractable pergola over the first floor terrace will result in a maximum building height for the new work of 8.9m, which exceeds the maximum height control by 0.4m or 4.7%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

(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 Planning Secretary has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

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Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

- (5) *In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

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The proposal will provide for the provision of an open steel frame pergola over an existing open terrace which will provide for improved solar protection for the property owners when utilising the terrace and also to the internal living spaces. The provision of the new retractable steel pergola will provide for increased amenity for the site's occupants.

The non-compliance with the height control to the north-eastern extremity of the new pergola element over the first floor terrace roof arises as a result of the site's sloping topography and the form of the existing development. The maximum height of the existing building to the current ridge will be unchanged.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed new works will not see any unreasonable impacts on the views enjoyed by neighbouring properties.

Due to the north-easterly orientation of the site and as outlined in the shadow diagram information which support the application, the works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Whale Beach Road and the wider public view of the site, together with from the surrounding private properties, will be largely maintained.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in clause 4.3 of PLEP.
- 5.2 Clause 4.3 of PLEP specifies a maximum building height of 8.5m in this area of Whale Beach.
- 5.3 The proposed additions and alterations to the existing dwelling will have a maximum height of 8.9m, which exceeds the height control by 0.4m or 4.7%.

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6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:
17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only*

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one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is clause 4.3 of PLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
 3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the E4 Environmental Living zone?
 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of PLEP?

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7.0. Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by two and three storey development.

The proposal seeks to accommodate the new works within a compatible building form, with the slope of the site towards the east resulting in a portion of the new steel framed retractable pergola over the existing first floor terrace being up to 8.9m in height.

The external form of the development follows the sloping topography of the site, which assists with minimising the visual bulk of the development.

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

The proposed height of the new works to enclose a portion of the first floor terrace will maintain a compatible height and scale with that of the surrounding development.

The proposed additions to the dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposal will not obscure any important landscape and townscape features beyond that which would be anticipated by the development of a residential dwelling, which is stepped to maintain a predominantly two storey height on the site.

Consistent with the decision of Roseth SC in *Project Ventures Developments v Pittwater Council* [2005] NSWLEC 191, it is my opinion that “most observers would not find the proposed building offensive, jarring or unsympathetic”.

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

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(c) to minimise any overshadowing of neighbouring properties,

The proposed works to partially enclose the existing first floor terrace present a modest increase in building height and bulk. The extent of the proposed overshadowing is reflected in the shadow diagrams prepared by Susan Rothwell Architects and which note that the minor increase in overshadowing does not materially affect the primary living spaces and outdoor areas of the adjacent neighbour to the south east.

(d) to allow for the reasonable sharing of views,

The proposed new works are located at the first floor terrace level, with the primary views for the surrounding properties being more directed towards the north and across the face and the lower levels of the current dwelling. The opportunity for the adjacent neighbours to continue to retain suitable views across the site towards Whale Beach will be maintained.

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

The proposal involvement very minor changes to the existing building, comprising the provision of a steel framed retractable pergola over the existing first floor terrace. The primary outlook for the adjoining neighbours is retained, and the building will continue to present a compatible bulk and scale with the new works considered to respond sensitively to the natural topography.

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

The proposed works will not see any further site disturbance, or loss of landscaped area. The site does not join any sites of heritage significance and the proposal is considered to be reasonable in this portion of Whale Beach.

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7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *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.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed additions will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the surrounding character of Whale Beach Road which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new development is considered to promote good design and enhance the solar protection residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).

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- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides for the provision of a new open style retractable pergola which maintains views over and past the building for the surrounding properties, whilst improving the solar protection for the occupants and the thermal efficiency of the internal living spaces. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E4 Environmental Living Zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the E4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the*

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aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone”.

In response to Nessdee, I have provided the following review of the zone objectives:

It is considered that notwithstanding the modest breach of the maximum building height by 400mm at the north-eastern extremity of the proposed new steel retractable pergola, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environment or Living Zone for the following reasons:

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

As found in Nessdee, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The proposal provides for modest alterations and additions which comprise the provision of a new steel frame retractable pergola over the existing first floor terrace in a manner which will retain the single dwelling character of the site and the immediate area.

The site and its location in Whale Beach Road is considered to be an area of special visual and aesthetic value.

The external form of the development is stepped with the sloping topography of the form, which will reduce the visual bulk of the development.

Further, the modulation of the front façade and side elevations at the upper level will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and will not be a visually prominent element in the area.

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

The design prepared by Susan Rothwell Architects has been prepared to meet the client brief, together with ensuring that the visual bulk and overall height of the dwelling is effectively managed.

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The design is considered to be an improvement in terms of the building's appearance and visual impact and for these reasons, the development does not result in an adverse impact on the special aesthetic values of the site.

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

The proposal provides for the inclusion of a steel frame retractable pergola over the existing first floor terrace.

As the design provides for an open style structure with a complementary colour palette, the building respects the predominant scale of development in the locality.

The setbacks are compatible with the existing surrounding development and the proposal does not have an adverse impact on long distance views.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of PLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

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8.0 Conclusion

This development proposes a departure from the maximum building height control, with the proposed new works to provide for a steel frame retractable pergola over the existing East facing first floor terrace which will have a height of up to 8.9m.

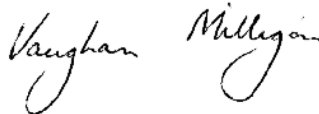
This variation occurs as a result of the sloping topography of the site and siting of existing development.

This objection to the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of PLEP 2014 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.5

**MOD2021/0620 - 38 UNDERCLIFF ROAD, FRESHWATER -
MODIFICATION OF DEVELOPMENT CONSENT DA2020/1501
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION
OF A DWELLING HOUSE INCLUDING SECONDARY
DWELLING AND SWIMMING POOL.**

REPORTING MANAGER Rebecca Englund
TRIM FILE REF 2021/699966
ATTACHMENTS
1 Assessment Report
2 Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Council, as the consent authority, **approves** Mod2021/0620 for Modification of Development Consent DA2020/1501 granted for demolition works and construction of a dwelling house including secondary dwelling and swimming pool on land at Lot 22 DP 5118, 38 Undercliff Road, Freshwater, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0620
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 22 DP 5118, 38 Undercliff Road FRESHWATER NSW 2096
Proposed Development:	Modification of Development Consent DA2020/1501 granted for demolition works and construction of a dwelling house including secondary dwelling and 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:	Gregory Craig Cetinich Marcella Cetinich
Applicant:	Denis Smith

Application Lodged:	24/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	02/09/2021 to 16/09/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks to modify development consent DA2020/1501, which approved demolition works and the construction of a dwelling house, secondary dwelling and swimming pool.

The modification involves minor external and internal changes to the dwelling house, including minor external alterations to the approved outdoor living area on the north-eastern side of the site that presents to the Moore Lane, which was the subject of conditions imposed by the DDP. The visual appearance of the building remains generally consistent with that approved under DA2020/1501 and the overall height, footprint, bulk and scale of the building remains unchanged.

The application was notified for a period of 14 days and one (1) submissions was received, raising concern with stormwater management. The stormwater management solution remains unchanged and unaffected by the proposed modifications.

The proposed modifications are not considered to generate any unreasonable amenity impacts and the modification results in a development that is substantially the same as originally approved under DA2020/1501. As the application has been made pursuant to s4.55(2) of the EP&A Act in relation to a matter previously determined to by the DDP, the application is referred to the DDP for determination with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(2) of the EP&A Act seeks to modify the built form approved under Development Consent DA2020/1501.

The modifications proposed include:

- Deletion of doors and windows to internal courtyard and the addition of operable skylight to roof above;
- Replacement of sliding doors with glass louvres to ground floor;
- Reconfiguration of deck and pool area including reduction of approved planters.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 22 DP 5118 , 38 Undercliff Road FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-eastern side of Undercliff Road.</p> <p>The site is regular in shape with a 15.825m wide frontage to Undercliff Street and a 15.45m wide frontage to Moore Lane. The site has an average depth of 37.5m and a surveyed area of 576.7m².</p> <p>The site is located within the R2 Low Density Residential zone and currently accommodates a dwelling house.</p> <p>The site slopes from south-west to north-east and includes a crossfall of approximately 5m.</p> <p>The site does not include any significant landscape features or vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one, two and three storey dwelling houses and multi dwelling housing.</p>

Map:



SITE HISTORY

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

DA2020/1501 - Demolition works and construction of a dwelling house including secondary dwelling and swimming pool. (Approved by DDP 7 May 2021)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/1501, in full, with amendments detailed and assessed where relevant throughout the report.

Section 4.55(2) Assessment

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council can be satisfied that the proposed works are substantially the same as those already approved under DA202/1501 for the following reasons:</p> <ul style="list-style-type: none"> • The approved use of the site will remain unchanged. • From both a qualitative and quantitative perspective (which includes (but is not limited to) building height, setbacks, landscaped area, etc.) the proposed modifications will not substantially alter the development from what was previously approved.

Section 4.55 (2) - Other Modifications	Comments
	<ul style="list-style-type: none"> The proposal will have no additional impacts on surrounding sites nor the public domain.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2020/1501 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Regulation 2000 and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55(3) of the EP&A Act, in determining a modification application made under section 4.55, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the EP&A Act 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

Section 4.15 'Matters for Consideration'	Comments
	development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
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 02/09/2021 to 16/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Karen Warburton	3 Kurraba Road NEUTRAL BAY NSW 2089

The matters raised within the submissions are addressed as follows:

- Stormwater runoff**
 Concern is raised in regards to the existing issues with runoff in Moore Road. The original application was referred to Council's development engineers for comment in regards to stormwater management. Suitable conditions were imposed as part of the original consent to ensure adequate stormwater management for the two dwellings (principal and secondary) and adjoining properties.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>No objection, no conditions.</p> <p>The modification includes deletion of planted areas along the northern end of the site and replacement with 650mm wide garden planters and entertainment area above the secondary dwelling and garage.</p> <p>The Landscape Plans provided indicate planting to the new planters, which is not objected to, however, widening of the planters to provide 800mm width for increased soil volume would provide a better long term outcome in terms of the ongoing viability and health of the proposed planting.</p> <p><u>Planner Comment:</u> A condition of consent has been included as part of this recommendation to ensure the proposed new planters are widened to 800mm, to ensure the longevity of the proposed planter boxes.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1154466M_03 dated 27 July 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

Comment:

The development is located partially within the coastal environment area. The development will not result in any adverse impact on the items within (1)(a)-(g).

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

Comment:

The proposed development is not likely to adversely impact the environmental and cultural values of the 'Coastal Environment Area'.

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

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

Comment:

The development will not cause an increased risk of coastal hazards on the site or other land.

As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m (Dwelling House) 5.3m (Pergola) 2.9m (garage)	3.9m (top of proposed glass louvers) 3.5m (Top of proposed outdoor living)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	7.7m	Sliding doors - 5.5m	Yes
B3 Side Boundary Envelope	south - 5m	Non - compliant Height - 0m - 1.1m Length - 4.7m	No change	-
	north - 5m	Compliant	Compliant	-
B5 Side Boundary Setbacks	south - 0.9m	0.9m (Dwelling house, Garage)	1.9m (Measured to new outdoor living area)	Yes
	north - 0.9m	0m (Secondary dwelling) 0.9m (Dwelling house)	0.9m (Measured to new outdoor living area)	Yes

B7 Front Boundary Setbacks	6.5m (Primary frontage)	4.5m - 8.5m (Dwelling)	No Change	-
	3.5m (Secondary frontage)	1m (Garage) 2m (Secondary dwelling) 1m (Decking)	Decking -0.99m Garage and Secondary dwelling- No change	No
D1 Landscaped Open Space and Bushland Setting	40% (230.68sqm)	28.8% (166.2sqm)	28.8% (166.2sqm)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B7 Front 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	No
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
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
E6 Retaining unique environmental features	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

Description of non-compliance

The Warringah DCP 2011 requires a 6.5m setback to the frontage and a 3.5m setback to the secondary frontage.

The proposed alterations deck and planter alterations propose a 0.991m setback from the secondary street frontage (Moore Lane), non-complaint with the numeric control. This represents a 71.8% variation to the numeric control.

The approved planter were setback 1m from the Moore Lane and as such seeks a .09m reduction to the setback approved under DA2020/1501.

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 proposed deck alterations are not expected to cause unreasonable impacts upon the openness of the front setback area. Commensurate to surrounding properties, it is found that the proposed encroaching elements do not jeopardise the existing sense of openness and that the works are appropriately designed and proportioned. The proposed alteration to the front setback, while slightly reduced, does contradict the determination made by Council in determining the original development application. The proposed alterations provides a better landscape setback to Moore lane at ground floor level and will not impact upon lines of sight for vehicles entering and exiting the garage at lower ground floor level.

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

Comment:

The existing front setback pattern of buildings along the eastern side of Moore Lane is varied. The proposed deck alterations are not expected to cause unreasonable impact to the visual continuity between buildings and landscape elements. Whilst marginally reduced compared to that approved, the proposed alterations will allow for a more regular planting arrangement, increasing the minimum width of the planter from 0.2m to 0.65m as pictured below. As recommended by Council's landscape officer a condition of consent has been imposed to further increase the width of the planter from 0.65m to 0.8m.

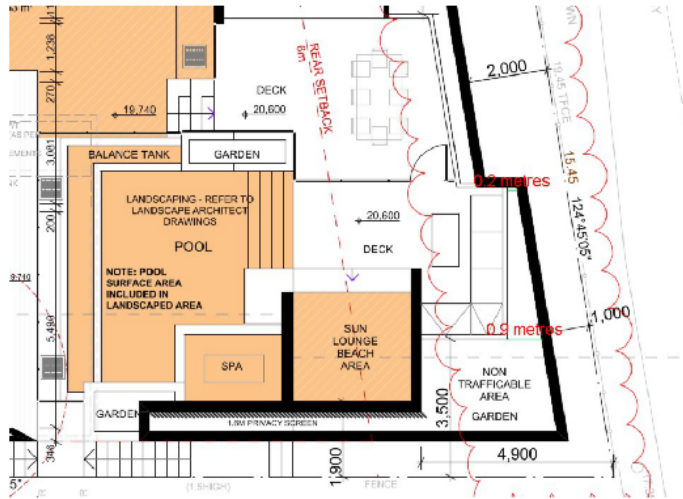


Image 1 - Approved ground floor plan

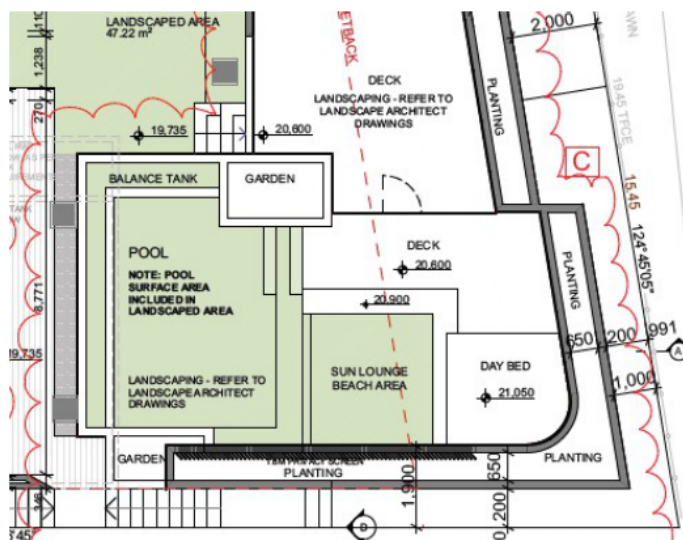


Image 2 - Proposed ground floor plan

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

Comment:

The design of the proposal will successfully achieve a reasonable level of openness within the front setback, while maintaining the visual continuity of buildings and landscape elements. The reduced front setback will not unreasonably affect the visual quality of the surrounding streetscape, as there are still opportunities within this setback area to incorporate adequate landscaping to soften the built form. Therefore, the proposal is compatible with the established streetscape of Undercliff Road and Moore Lane.

- To achieve reasonable view sharing.

Comment:

The proposed deck alterations will not result in any unreasonable loss of views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this control and accordingly, the proposed variation is supported in this instance.

D1 Landscaped Open Space and Bushland Setting

The modifications propose include reducing the size of planter box to the south-east corner of the subject site. However, this area was not counted in the original landscaped open space (LOS) calculations as it did not meet minimum soil depth requirements of this clause. Therefore, the reduction of planter box does not technically reduce the landscaped area calculations of the approved development. The site retains the existing approved non-compliance.

Subject to increasing the width of modified planter box from 650mm- 800mm, as recommended by Council's Landscape Officer, the proposed planters will still allow for a viable long term solution for planting across the site.

D8 Privacy

The application proposes to extend the size of the outdoor living area to the south-east area of the property to allow for a day bed. The proposed day bed will be located 450mm above the level of the deck. The resulting acoustic and visual privacy impact is not significant or unreasonable in the residential context of the site, and suitable visual and acoustic privacy will be retained to adjoining properties.

The proposed outdoor living extension will result in a reduction to the size of the garden area, with the resulting garden bed having a width of 0.65m. The approved planters, while not relied upon for privacy, may assist in offsetting overlooking between properties. As recommended by Council's landscape officer and to ensure a better long term outcome for the viability and health of the proposed planting, a condition of consent is recommended to require the width of the planters that adjoin the day bed to be increased from 650mm to 800mm. The small increase of the planting area by way of conditions will still allow for a significantly sized outdoor living area. The increased width will also provide increased spatial separation between the proposed outdoor living area and adjoining properties.

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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

- Privacy resulting from a increased sized deck; and
- Alterations to the built form.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0620 for Modification of Development Consent DA2020/1501 granted for demolition works and construction of a dwelling house including secondary dwelling and swimming pool on land at Lot 22 DP 5118,38 Undercliff Road, FRESHWATER, subject to the conditions printed below:

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

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.02/ Issue D	7 July 2021	Arkhaus
DA.03/ Issue D	7 July 2021	Arkhaus
DA.04/ Issue D	7 July 2021	Arkhaus
DA.05/ Issue D	7 July 2021	Arkhaus
DA.06/ Issue D	7 July 2021	Arkhaus
DA.07/ Issue D	7 July 2021	Arkhaus
DA.09/ Issue D	7 July 2021	Arkhaus
DA.10/ Issue D	7 July 2021	Arkhaus
DA.11/ Issue D	7 July 2021	Arkhaus

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1154466M_03	27 July 2021	ECOMODE 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
Landscape Plan	12 July 2021	Amy Taylor

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

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

B. Add Condition No. 14A- Planter Box Extension - to read as follows:

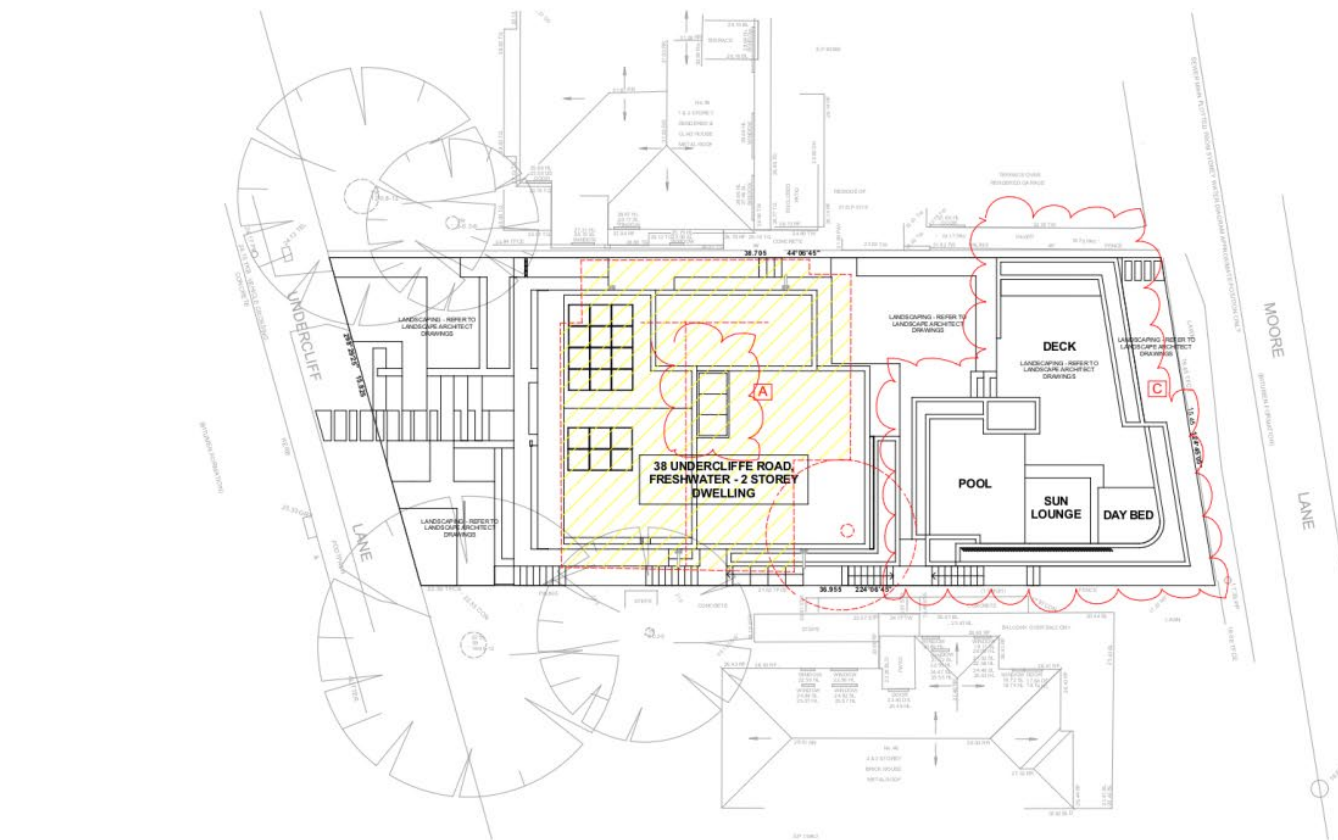
The width of the proposed planter boxes that adjoin the day bed is to be increased from 650mm to 800mm. The additional width should not result in any reduction to the setback to Moore Lane.

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

Reason: To ensure appropriate soil volume for planting.

REVISION SCHEDULE

A: Deletion of doors and windows to internal courtyard and addition of operable skylight to roof above. Void to first floor and all other floors retained. No increase to usable floor space provided.
B: Replacement of sliding doors with glass louvres.
C: Revised configuration of deck and pool area - refer to landscape architects drawings.



SITE PLAN
Scale 1:200

LEP & DCP	REQUIRED	PROPOSED	COMPLIANT
ZONING	R2	-	COMPLIANT
FSR	NONE-STATED	0.5:1	COMPLIANT
HEIGHT	7.5m	8.2m	COMPLIANT
SITE AREA	576.7m ²	310.92 m ²	COMPLIANT
GROSS FLOOR AREA	30.2% x 576.7m ² = 174.04	187.98 m ²	COMPLIANT
LANDSCAPE AREA	40% of GFA = 230.68m ²	181.32 m ²	COMPLIANT
PRIVATE OPEN SPACE	60m ²	113.42 m ²	COMPLIANT
SETBACKS			
GROUND FLOOR SETBACKS			
FRONT SETBACK	6.5m	6.5m	COMPLIANT
REAR SETBACK	6m	1M (20% ROAD)	REAR - PRE-EXISTING
SIDE SETBACK	900mm	900mm	COMPLIANT
FIRST FLOOR SETBACKS			
FRONT SETBACK	6.5m	6.5m	COMPLIANT
REAR SETBACK	6m	Boundary	COMPLIANT
SIDE SETBACK	900mm	900mm	COMPLIANT

BUILDING COMPONENT	TYPE/FINISH
FLOOR CONSTRUCTION	GF: CONCRETE SLAB FF: LIGHTWEIGHT TIMBER
FLOOR COVERINGS	LIVING: TILED DINING: TILED KITCHEN: TILED BED: CARPET
EXTERIOR WALL CONSTRUCTION	GF: CAVITY BRICK FF: TIMBER FRAME
EXTERIOR WALL FINISH	GF: RENDER FF: CLADDING
INTERNAL WALL CONSTRUCTION	GF: TIMBER STUD FF: TIMBER STUD
ROOF	METAL
WINDOW FRAME TYPE	ALUMINIUM
HOT WATER SYSTEM	GAS
AIR CONDITIONING	MULTI-HEAD 3-PHASE
COOKTOP AND OVEN	COOKTOP: GAS OVEN: ELECTRIC
GFA BY STOREY	
STOREY	AREA
BASEMENT	38.68
GROUND FLOOR	168.01
FIRST FLOOR	104.23
	310.92 m ²
LANDSCAPE	
STOREY	AREA
BASEMENT	13.05
GROUND FLOOR	158.27
	181.32 m ²

LEGEND	
EXISTING DWELLING TO BE DEMOLISHED	(X)
EXISTING NEIGHBOURING TREES	(n)
EXISTING TREES TO BE RETAINED	(n)
EXISTING TREES TO BE REMOVED	(n)
PIT TO SW/RECOMMENDATION	(X)
PLANTING TO LANDSCAPE ARCHITECT SPECIFICATION	(n)
LANDSCAPED AREA	(n)

DEVELOPMENT APPLICATION

ARKHAUS (02) 9697 8554 hello@arkhaus.com.au www.arkhaus.com.au Suite 4/20/77 Dunning Avenue, Rosebery NSW 2018

The works to be completed in accordance with the National Construction Code, Australian Standards and relevant by laws. All proprietary items are to be installed in accordance with manufacturers details and specifications. Suitable safety approvals and specifications for items part of the construction methods are to be obtained. Where alterations of dimensional measurements are to be taken, your model measurements. These drawings have been prepared by Arkhaus and remain the property of the above mentioned party. These drawings are not to be used in any way without the permission of Arkhaus and are subject to copyright laws.

amendments	Date	Issue	Description
	12/11/20	DA01	DEVELOPMENT APPLICATION ISSUE
	19/02/2021	DA02	ISSUE B - RPI
	19/03/2021	DA03	ISSUE C - STUDIO/REAR LANDSCAPE
	07/07/2021	DA04	ISSUE D - Modification to approved DA

Date	Issue	Description
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Client
GC & MC
Drawing
SITE PLAN

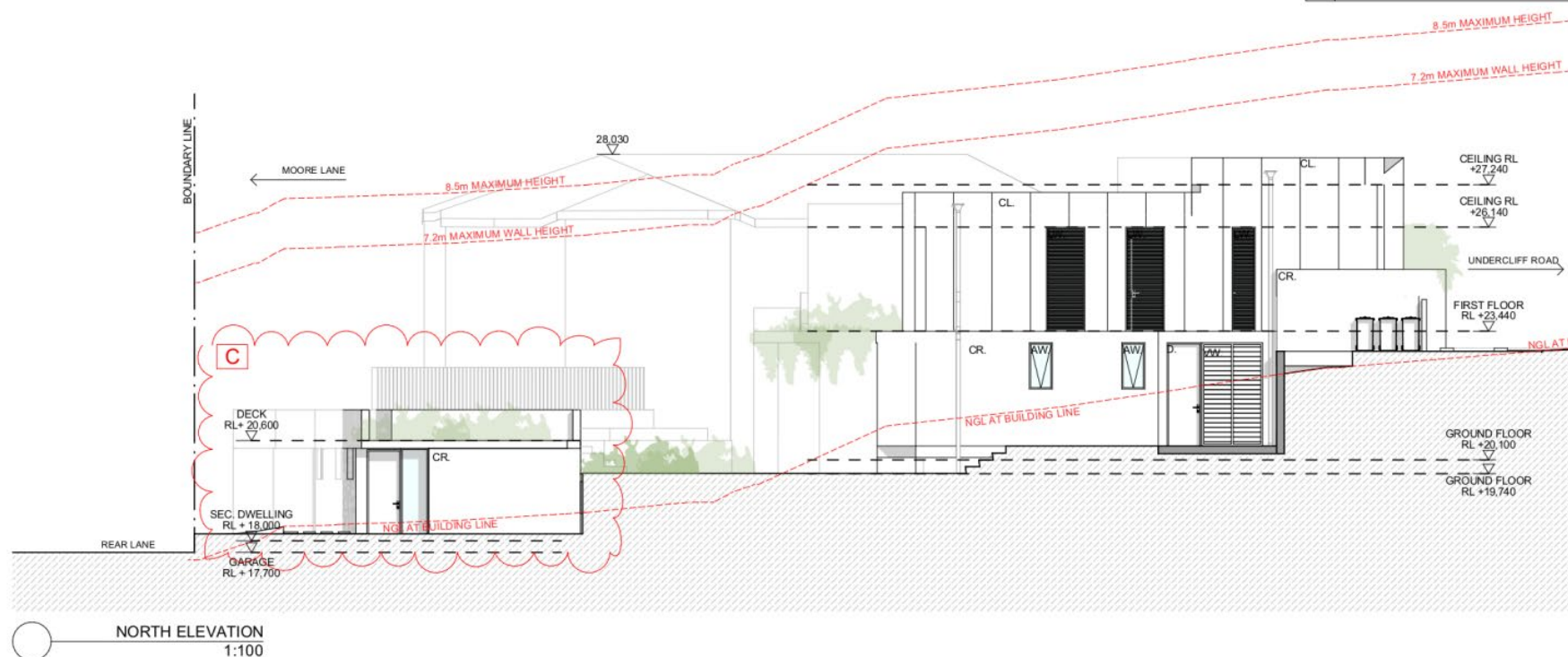
Project description
NEW DWELLING HOUSE
Project address
**38 UNDERCLIFF ROAD
FRESHWATER NSW 2096**

Sheet no
DA.02
Job no.
2015DA

REVISION SCHEDULE

A: Deletion of doors and windows to internal courtyard and addition of operable skylight to roof above. Void to first floor and all other floors retained. No increase to usable floor space provided.
B: Replacement of sliding doors with glass louvres.
C: Revised configuration of deck and pool area - refer to landscape architects drawings.

LEGEND	
AW	AWNING WINDOW (Aluminium windows, as selected)
BG	BOX GUTTER
C	CARPET
CL	CLADDING
CR	CEMENT RENDER
CW	CASEMENT WINDOW (Aluminium windows, as selected)
DP	DOWN PIPE
FB	FACE BRICK (As selected)
FRP	FACADE RENDERED & PAINTED FINISH
FW	FIXED WINDOW (Aluminium window, as selected)
GB	GLASS BALUSTRADING
LW	LOUVRE WINDOW
MB	METAL BALUSTRADING
MR	METAL ROOFING (As selected)
OB	OBSCURE GLASS
PS	PRIVACY SCREENING
PSE	PAINTED SLAB EDGE (As selected)
SD	SLIDING DOOR (Aluminium doors as selected)
SW	SLIDING WINDOW (Aluminium windows, as selected)
T	TILES (As selected)
TF	TIMBER FLOOR
VW	VENT WINDOW (Aluminium window, as selected)
GD	GARAGE DOOR



DEVELOPMENT APPLICATION

ARKHAUS

(02) 9697 9554 hello@arkhaus.com.au www.arkhaus.com.au Suite 4/1077 Dunning Avenue, Rosebery NSW 2018

The works to be completed in accordance with the National Construction Code, Australian Standards and relevant by laws. All proprietary items are to be located in accordance with manufacturer details and specifications. Siting, delivery approach and specifications shall form part of the construction methods are to be outlined in. Where alterations of dimensional measurements are to be taken, your model measurements. These drawings have been prepared by Arkhaus and remain the property of the above mentioned party. These drawings are not to be used in any way without the permission of Arkhaus and are subject to copyright laws.

amendments

Date	Issue	Description
12/11/20	DA01	DEVELOPMENT APPLICATION ISSUE
19/02/2021	DA02	ISSUE B - RFI
19/03/2021	DA03	ISSUE C - STUDIO/REAR LANDSCAPE
07/07/2021	DA04	ISSUE D - Modification to approved DA

Date	Issue	Description
29/04/2021	DA05	ISSUE D - REVISED STUDIO/GARAGE ORIENTATION IN RESPONSE TO PLANNING PANEL COMMENTS

Client
GC & MC.
Drawing
ELEVATIONS

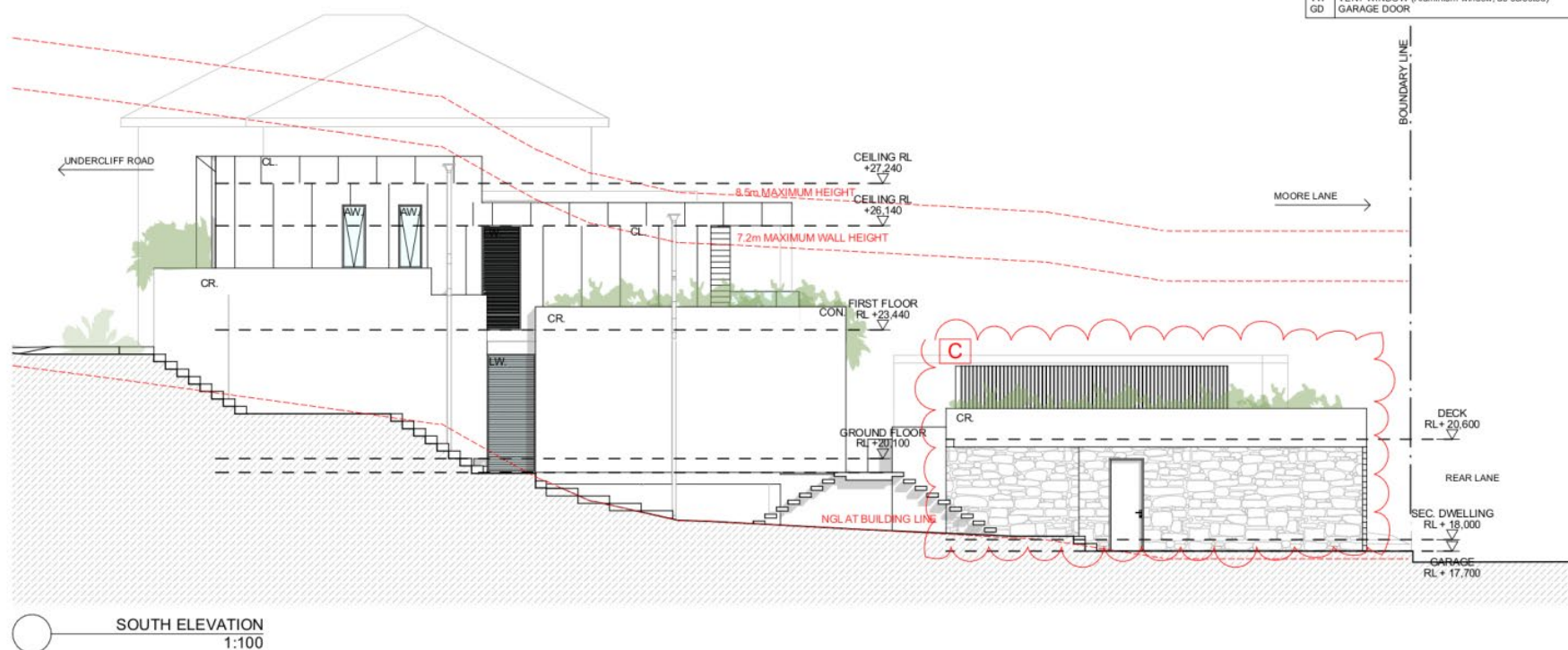
Project description
NEW DWELLING HOUSE
Project address
38 UNDERCLIFF ROAD
FRESHWATER NSW 2096

Sheet no.
DA.09
Job no.
2015DA

REVISION SCHEDULE

A: Deletion of doors and windows to internal courtyard and addition of operable skylight to roof above. Void to first floor and all other floors retained. No increase to usable floor space provided.
B: Replacement of sliding doors with glass louvres.
C: Revised configuration of deck and pool area - refer to landscape architects drawings.

LEGEND	
AW	AWNING WINDOW (Aluminium windows, as selected)
BG	BOX GUTTER
C	CARPET
CL	CLADDING
CR	CEMENT RENDER
CW	CASEMENT WINDOW (Aluminium windows, as selected)
DP	DOWN PIPE
FB	FACE BRICK (As selected)
FRP	FACADE RENDERED & PAINTED FINISH
FW	FIXED WINDOW (Aluminium window, as selected)
GB	GLASS BALUSTRADING
LW	LOUVRE WINDOW
MB	METAL BALUSTRADING
MR	METAL ROOFING (As selected)
OB	OBSCURE GLASS
PS	PRIVACY SCREENING
PSE	PAINTED SLAB EDGE (As selected)
SD	SLIDING DOOR (Aluminium doors as selected)
SW	SLIDING WINDOW (Aluminium windows, as selected)
T	TILES (As selected)
TF	TIMBER FLOOR
VW	VENT WINDOW (Aluminium window, as selected)
GD	GARAGE DOOR



DEVELOPMENT APPLICATION

ARKHAUS

(02) 9697 8554 helo@arkhaus.com.au www.arkhaus.com.au Suite 4/20/77 Dunning Avenue, Rosebery NSW 2018

The works to be completed in accordance with the National Construction Code, Australian Standards and relevant by laws. All proprietary items are to be located in accordance with manufacturers details and specifications. Existing building approvals and specifications that form part of the construction methods are to be adhered to. Where alterations or dimensional measurements are to be taken, your onsite measurements. These drawings have been prepared by Arkhaus and remain the property of the above mentioned party. These drawings are not to be used in any way without the permission of Arkhaus and are subject to copyright laws.

amendments

Date	Issue	Description
12/11/20	DA01	DEVELOPMENT APPLICATION ISSUE
19/02/2021	DA02	ISSUE B - RPI
19/03/2021	DA03	ISSUE C - STUDIO/REAR LANDSCAPE
07/07/2021	DA04	ISSUE D - Modification to approved DA

Date:
29/04/2021

Issue:
DAD

Description:
ISSUE D - REVISED STUDIO/GARAGE
ORIENTATION IN RESPONSE TO PLANNING
PANEL COMMENTS

Client:
GC & MC

Drawing:
ELEVATIONS

Project description:
NEW DWELLING HOUSE

Project address:
38 UNDERCLIFF ROAD
FRESHWATER NSW 2096

Sheet no:
DA 10

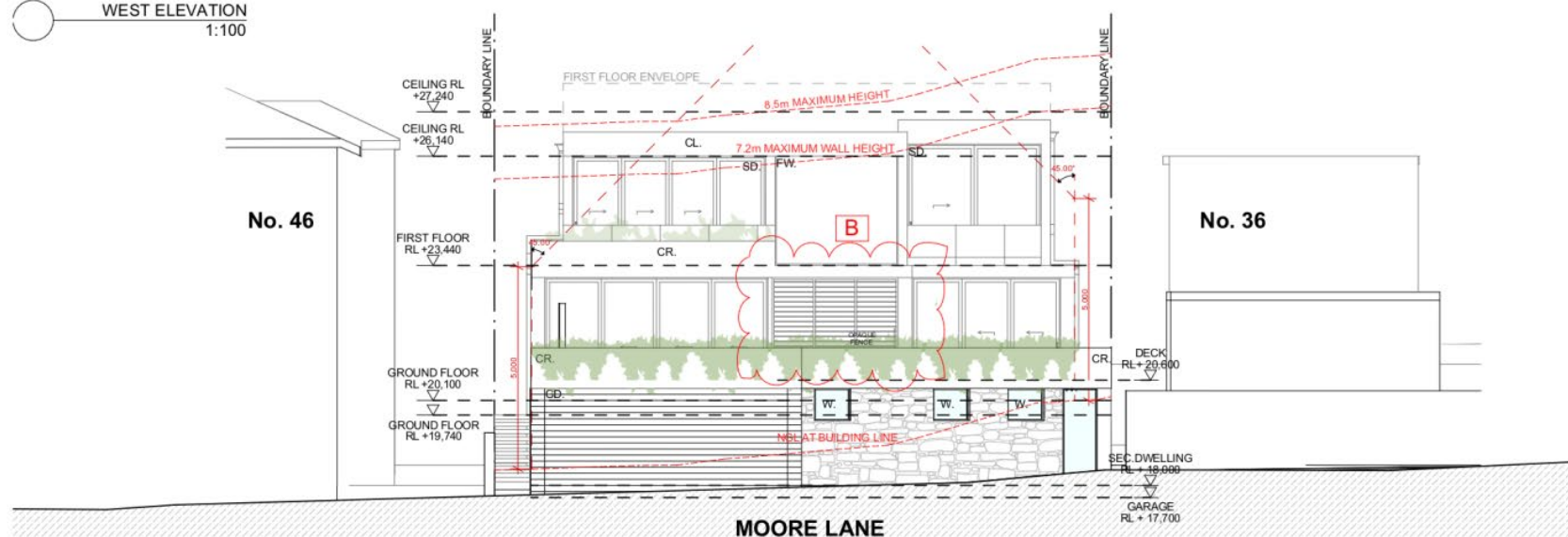
Job no:
2015DA



WEST ELEVATION
1:100

REVISION SCHEDULE	
A:	Deletion of doors and windows to internal courtyard and addition of operable skylight to roof above. Void to first floor and all other floors retained. No increase to usable floor space provided.
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C:	Revised configuration of deck and pool area - refer to landscape architects drawings.

LEGEND	
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BG	BOX GUTTER
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TF	TIMBER FLOOR
VW	VENT WINDOW (Aluminium window, as selected)
GD	GARAGE DOOR



EAST ELEVATION
1:100

ARKHAUS

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amendments

Date	Issue	Description
12/11/20	DA01	DEVELOPMENT APPLICATION ISSUE
19/02/2021	DA02	ISSUE B - RPI
19/03/2021	DAC	ISSUE C - STUDIO/REAR LANDSCAPE
07/07/2021	DAD	ISSUE D - Modification to approved DA

Date

29/04/2021

Issue

DAD

Description
ISSUE D - REVISED STUDIO/GARAGE ORIENTATION IN RESPONSE TO PLANNING PANEL COMMENTS

Client

GC & MC

Drawing

ELEVATIONS

Project description

NEW DWELLING HOUSE

Project address

38 UNDERCLIFF ROAD
FRESHWATER NSW 2096

Sheet no

DA 11

Job no.

2015DA

DEVELOPMENT APPLICATION