

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 24 NOVEMBER 2021



Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 24 November 2021
via teleconference
Commencing at 10.00am**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 10 NOVEMBER 2021

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 10 November 2021 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2021/0905 - 53 WHEELER PARADE, DEE WHY - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Tony Collier
TRIM FILE REF	2021/795454
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuses** Development Consent to DA2021/0905 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot A DP 338618, 53 Wheeler Parade, Dee Why, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0905
Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot A DP 338618, 53 Wheeler Parade DEE WHY NSW 2099
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Owner:	Brent Damien Backhouse Nerilee Kate Telford
Applicant:	Brent Damien Backhouse
Application Lodged:	24/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	02/07/2021 to 16/07/2021
Advertised:	Not Advertised
Submissions Received:	12
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,766,000.00

EXECUTIVE SUMMARY

Development Application no. DA2021/0905 is referred to the Development Determination Panel as the proposal has attracted more than three unique submissions objecting to the proposal and has a capital investment value greater than one million dollars.

The application seeks consent for demolition works, excavation and ground works on both public and private land and the construction of a three-storey dwelling house atop of a two-storey basement with swimming pool and associated landscape works.

This report asserts that the proportions of the proposal are incongruous with the prevailing built

landscape and result in an excessive dominant and bulky form. The proposal results in an unacceptable loss of privacy to neighbouring properties and adversely affects the existing provision of views and solar access.

The development proposes the excavation of approximately 1,600 cubic metres of rock on the site, plus the removal of a large 6m high rock face on Council's road reserve in order to accommodate a new driveway, the access of which has been deemed unsuitable and unsafe by Council's Traffic Engineer.

Council wrote to the applicant providing an opportunity to amend the development application in a manner to address the concerns raised by Council however, the applicant HAS elected to file a Class 1 Application against Council's deemed refusal of the application to the NSW Land and Environment Court. Subsequent to that, the plans which form the basis of this Assessment Report herein are those plans initially submitted with the application and notified to surrounding land owners. Height poles have not been erected on the site to enable a thorough and detailed view loss analysis.

This report concludes with a recommendation that the Development Determination Panel refuse Development Application no. DA2021/0905 on the grounds of an inappropriate built form requiring unacceptable environmental destruction and unacceptably prejudicing the amenity of adjacent land.

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for demolition, excavation works and the construction of a three-storey detached dwelling house over two levels of basement with a swimming pool and associated landscape works.

Demolition works

The proposal seeks to demolish all existing structures on site.

Ground works

The proposal seeks to excavate approximately 1,600 cubic metres of rock / soil to accommodate a two-storey basement (note: estimated volume by author, exact figure not specified in supporting documentation). The proposal also seeks to excavate the road reserve to a depth of approximately 7.3m for a width of 6.8m. The excavation proposed necessitates the removal of three trees, two of which are on public land.

Construction

The development requires the construction of a three-storey building atop of a two-storey basement between RL52.30 and RL67.73.

The two storey basement has a combined floor area of approximately 320 square metres and accommodates car parking, pool plant, air conditioning, to bathrooms and circulation. The space is estimated to accommodate 8 parked cars.

Atop of the basement the three-storey house accommodates five bedrooms, two studies, six full bathrooms, four half bathrooms, sauna, library, games room, bar, sun room, open plan kitchen/living/dining space and terraces on all levels. These three levels have an internal floor area of approximately 525 square metres.

Externally the proposal includes a 17m long lap pool attached to a standard pool and spa.

REQUEST FOR ADDITIONAL INFORMATION

During the course of this application the Council requested that the application be amended to address

a number of issues that had been identified during the preliminary assessment, however, instead of providing the requested additional or revised information, the applicant elected to file a Class 1 Application to the NSW Land and Environment Court and thus, no revised plans have been received.

Further details on Council's request can be found in the Site History section of this report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
 Warringah Development Control Plan - A.5 Objectives
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - C7 Excavation and Landfill
 Warringah Development Control Plan - C9 Waste Management
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - D16 Swimming Pools and Spa Pools
 Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot A DP 338618 , 53 Wheeler Parade DEE WHY NSW 2099
Detailed Site Description:	The subject site is legally identified as Lot A in Deposited Plan 338618 and is known as No. 53 Wheeler Parade, Dee Why.

The site is located within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011.

The site is rectangular in shape with a width of 15.24 metres and a depth of 40.235 metres equating to an overall surveyed area of 613.18 square metres.

The site is the front allotment of a battle-axe subdivision with No. 55 Wheeler Parade located further to the west. The access handle, of which the site obtains vehicular access, runs parallel to the southern side boundary. The site benefits from a right of carriageway 3.43 metres wide over this access handle (burdening No. 55 Wheeler Parade).

The building platform of the site is generally flat with a cross-fall of approximately 1 metre (rising east to west), however the site is constrained by significant topographical features between it and Wheeler Parade. Council's road reserve measures approximately 7 metres in width in this location and accommodates a steep rock outcrop(s) rising by approximately 6 metres immediately adjacent to the street. The road reserve also accommodates a number of trees and other vegetation.

The site presently accommodates a single-storey detached masonry cottage centrally located on the site.

Surrounding developments are generally residential in nature and consist of older dwellings (like the subject site) or larger multi-storey contemporary dwellings. The site sits on the cusp of Dee Why and North Curl Curl.

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:

Pre-Lodgement Meeting No. 2021/0056

Council met with the applicant at a pre-lodgement meeting on 23 March 2021 to discuss the redevelopment of the property for a dwelling house.

In that meeting Council raised a number of concerns regarding the proposal, and concluded with the following recommendations to the proposal:

- Reduction in the extent of excavation.
- Provide a minimum 2.0m side setback to the basement levels (including enclosed staircase adjacent the northern boundary).
- Setback the garage door a minimum of 2.0m from the front boundary.
- Provide screen/softening landscaping in the northern side setback to No. 51.
- Provide a 2.0m front setback to the pool and associated structure, and the setback is to be suitably landscaped, via planters close to existing ground levels (can be terraced).
- Any walls associated with the basement/driveway facing the street and sides are to be faced in sandstone.
- Planter boxes, high sill windows and screens to be used on the southern and northern elevations of Level 1 and 2 (or reduced/no terrace access and smaller window areas). In this regard, planter boxes to be installed on northern edge of Terrace on Level 1 and southern edge of Terraces on Level 1.
- Sandstone finish on the basement levels presenting to the street.

Development Application No. 2021/0905 (the subject application)

This current development application is materially the same scheme as what was proposed in the Pre-

Lodgement Meeting, with the most notable change being an increased setback of nil to 1m to the garage door from the front boundary.

After a preliminary assessment Council wrote to the Applicant on 17 August 2021 and raised a number of concerns with the application that were requested to be addressed. Those issues raised in that letter requiring attention included:

- Wall height;
- Building envelope;
- Front boundary setback;
- Traffic access and safety;
- Excavation;
- Access to sunlight;
- Views, including height poles;
- Privacy;
- Building bulk;
- Swimming pool; and
- Landscaping.

Council requested these matters be resolved and revised information provided no later than 27 August 2021.

Council granted extensions to that deadline until 03 September and again to 15 September 2021 to enable the applicant adequate time to prepare revised information.

On 13 September Council was advised that the applicant had lodged a Class 1 Application against Council's deemed refusal of the application to the Land and Environment Court of NSW on 10 September 2021. No revised plans or information have been received.

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 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to built form, landscaping, traffic and access, excavation and amenity. These issues were raised in writing to the applicant who elected to not provide revised information, but instead submitted a Class 1 Appeal to the Land and Environment Court of NSW against Council's deemed refusal of the DA. <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 could be addressed via a condition of consent. <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 could be addressed via a condition of consent. <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 could be addressed via a condition of consent. <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.
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 2011 section in this report. In summary, the proposal is found to have an unacceptable environmental impact on rock escarpment and trees on public land. (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	For the reasons described in this report, the site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration	Comments
accordance with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirements of the Warringah Development Control Plan 2011 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

Environmental Planning and Assessment Regulation 2000

Clause 49 of the EP&A Regulation describes persons who can make development applications, including:

(1) *A development application may be made:*

- (a) *by the owner of the land to which the development application relates, or*
- (b) *by any other person, with the consent of the owner of that land.*

The proposed development is contingent upon Council's granting of consent (thus granting owners consent) for the removal of rock escarpment and trees within the public road reserve. No evidence is provided in the application to demonstrate that the applicant has sought Council's owners consent prior to the submission of the application. As described in this report Council does not support the development nor the removal of its rock escarpment and as such it cannot be assumed that owner's consent is granted.

The absence of Council's consent for the carrying out of works on its land forms a reason for refusal of the development application.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/07/2021 to 16/07/2021 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 12 submission/s from:

Name:	Address:
Mr Gary Robert Brewer	88 Headland Road NORTH CURL CURL NSW 2099

Name:	Address:
Mr Paul Anthony De Rome	74 A Cassia Street DEE WHY NSW 2099
Elizabeth Anne De Rome	74 A Cassia Street DEE WHY NSW 2099
Withheld	DEE WHY NSW 2099
Mr Jim Simon Stefan	PO Box 156 PARRAMATTA NSW 2124
Ms Georgina Maree Sawyer	78 Cassia Street DEE WHY NSW 2099
Mr David William Martin	51 A Wheeler Parade DEE WHY NSW 2099
Mrs Natalie Dawn Bindon	90 Headland Road NORTH CURL CURL NSW 2099
Withheld Withheld Mr Antony John Poate Mrs Nikki Elise Racco	DEE WHY NSW 2099
Withheld Withheld Mr Antony John Poate Mrs Nikki Elise Racco	76 Cassia Street DEE WHY NSW 2099
Hones Lawyers	Level 4 66 Berry Street NORTH SYDNEY NSW 2060
Mr Antaine Seamus Furlong	55 Wheeler Parade DEE WHY NSW 2099
Mrs Elizabeth Rebecca Furlong	55 Wheeler Parade DEE WHY NSW 2099

During the course of the application 12 submissions were received from nine individual households. The submissions received objecting to the development application raised a number of issues which can broadly be categorised as follows:

- **Amenity.**
- **Built Form.**
- **Constructability.**
- **Environmental.**
- **Road safety.**

The matters raised within the submissions are addressed as follows:

- **Amenity**

Comment

Submissions received raise concern regarding potential view loss, a loss of visual and acoustic privacy and overshadowing.

As detailed later in this report, Council concurs that the development results in an unacceptable loss of visual privacy and solar access to neighbouring properties. This forms a reason for refusal.

Adequate information relating to view loss has not been provided (i.e. no height poles have been erected on the site). This lack of information also forms a reason for refusal.

Concern has been raised about pool equipment generating an unreasonable level of noise and

thus reducing the amenity of nearby land. This concern can be readily addressed by a condition requiring the equipment to be housed in a sound-attenuating enclosure. This matter does not warrant the refusal of the application.

- **Built Form**

Comment

Submissions received note that the development does not comply with a number of Council's Built Form controls including the Front Boundary Setback, Side Boundary Envelope and Landscape Open Space. Council concurs that the development breaches these controls to an unacceptable degree and therefore, as detailed later in this report, these items are included as reasons for refusal.

Submissions received also state the the development exceeds the maximum height of buildings of 8.5m contrary to Clause 4.3 of the *Warringah Local Environmental Plan 2011*. Council's assessment of the submitted plans and the survey data has found that the building height is compliant with the maximum permissible height and therefore this does not form a reason for refusal.

- **Constructability**

Comment

Submissions received question the constructability of the proposal and whether it could be undertaken without requiring the removal of the entire rock escarpment. Should the application be approved a condition could be imposed requiring periodical checks by a Geotechnical Engineer and that any recommendations made by that engineer be included in the structural design.

Concerns are also raised regarding the length of construction as well as the associated noise and traffic impacts. Some of these concerns can be addressed by way of condition and others are inevitable during any construction (i.e. noise from tools). These matters do not warrant the refusal of the application.

A number of submissions request a condition be imposed on any consent requiring pre and post-construction dilapidation reports to ensure that any damages to neighbouring properties are properly document. Were the application to be approved this would form a condition of consent.

- **Environmental**

Comment

Submissions received object to the removal of the rock escarpment and trees that sit on public land to the front of the site, noting that these features contribute greatly to the aesthetic of the street and to local biodiversity. Council does not support the removal of the rock escarpment or the two trees within the road reserve and this is included as a reason for refusal.

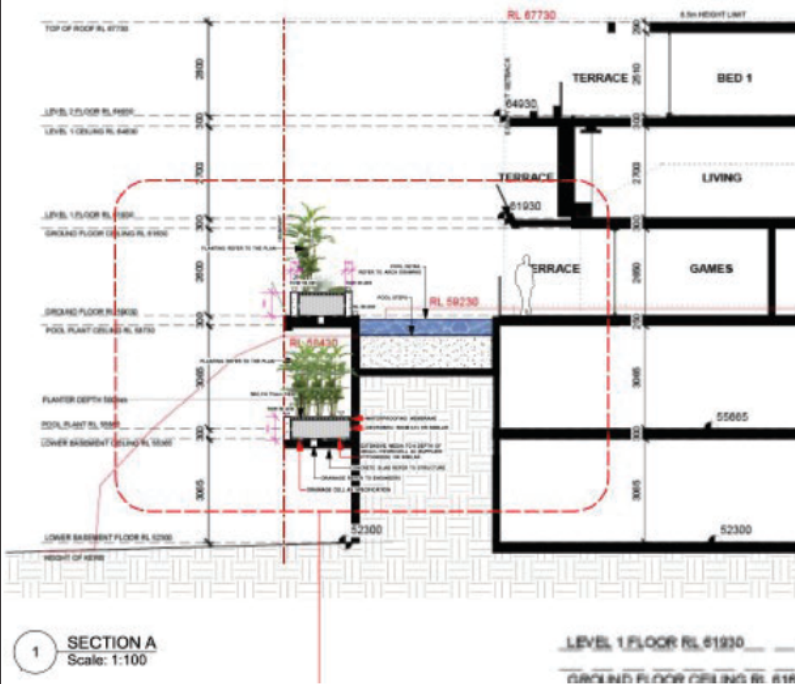
It is also noted that the consent of Council (as the owner of the road reserve upon which the escarpment and trees are located) has been provided as part of the application. This also forms a reason for refusal.

- **Road safety**

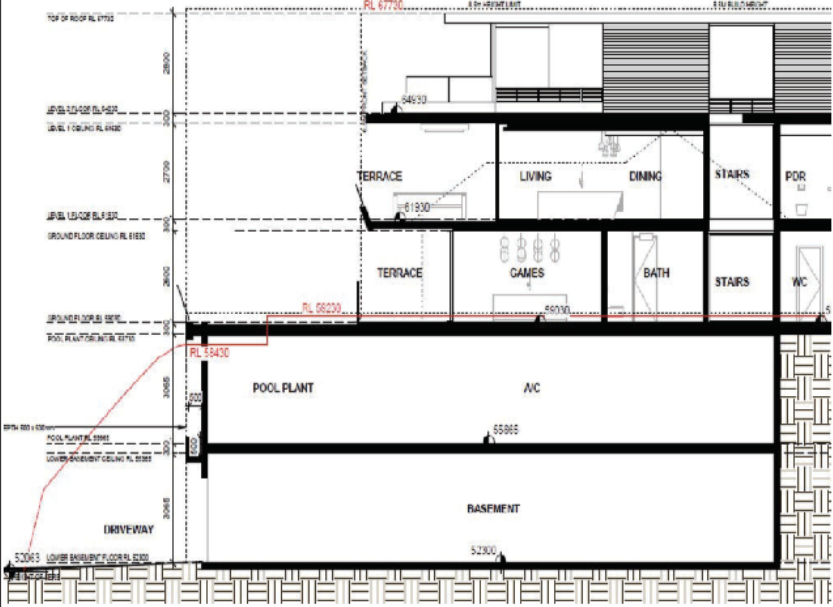
Comment

Submissions received note that the new driveway access may give rise to adverse impacts to the safety of pedestrians and other drivers. Council's Traffic Engineer concurs with these concerns and has recommended the refusal of the application on this basis.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<u>Additional Information Comment 01/09/2021</u> The amended Landscape Plan provided as additional information is noted. The section shown on the landscape plan indicates planting below a planter adjacent to the pool when there is existing rock indicated on the plan forward of this area. The extent of excavation indicated is unclear across the plans provided. It is also difficult to understand how the planter below plater indicated on the section can be maintained and be a successful planting option.  Removal of rock and vegetation (Including 2 x Category A trees identified in the Arborist's Report) for the drive access is not supported from a landscape perspective when there is an existing drive access on the southern side of the property. The application does not propose replacement trees are indicated in the front setback of the property, nor in the road reserve.

Internal Referral Body	Comments
	Other landscape works indicated within the property are not objected to, however the excavation on the road reserve and tree removal as indicated above are not supported with regard to landscape assessment when considered against the WLEP 2011 Objectives of R2 Zone, WDCP D1 Landscaped Open Space and Bushland Setting, E1 Preservation of Trees or Bushland Vegetation and E6 Retaining unique environmental features. <u>Original Comment</u> The proposal seeks consent for demolition of the existing structures and the construction of a new dwelling including excavation of the site to provide for a basement garage, driveway, swimming pool and associated landscaping. Councils Landscape Referral section has considered the application against the Warringah Local Environment Plan, and the following Warringah DCP 2011 controls: D1 Landscaped Open Space and Bushland Setting E1 Preservation of Trees or Bushland Vegetation The Arborist's report submitted with the application is noted. The Report indicates that 2 Category A trees located in the road reserve are to be removed to accommodate the new driveway. All other trees on the subject site are to be removed. No Landscape Plan was sighted with the documents viewed. Concern is raised regarding impacts on the streetscape of the proposed development following significant excavation, construction of retaining walls, and location of pool and terraces. Narrow planting areas are proposed along the northern and southern boundaries, which may not support planting as indicated in the elevations and plans. Section 3 provided with the application indicates ground level slab within the front setback to the boundary. The Landscape Area Calculation incorporates this area as landscape open space, which would not meet the definition in the planning controls.

Internal Referral Body	Comments
	 A Landscape Plan prepared by a qualified Landscape Architect or Landscape Designer is required to enable assessment of the proposal against the relevant planning controls. At this stage the proposal is not supported with regard to landscape issues.
NECC (Development Engineering)	<u>Excavation</u> A Geotech Report by White Geotechnical Group, Ref J3486, dated 11/6/2021 is provided and advises recommendations to achieve acceptable risk to life and property. <u>Stormwater</u> The site falls to Wheeler Parade to the east. Proposal is to discharge site stormwater to street drainage system through an onsite stormwater detention tank. Stormwater Plans by NB Consulting Engineers, Job No 200649, Drawing No D01 to D05 , Issue A, dated 17/7/2021 are satisfactory. <u>Access</u> Proposal is for new vehicular access from the Wheeler Parade but plans indicates proposal of gate at rear which leads to the use of existing shared driveway through ROW as well. This would mean that the dwelling would have two points of vehicular access. Council can only allow one point of vehicle access to a dwelling. No cross-section elevation from the road to the proposed basement has been provided in compliance with council vehicular crossing profile and

Internal Referral Body	Comments
	AS/NZS 2890:1;2004. The applicant is required to provide Longitudinal section of driveway from street gutter to basement showing chainage, grades, existing and proposed levels and address all the comments by Council's Traffic Team in the revised submission.
Traffic Engineer	The proposal is for demolition of the existing dwelling and construction of a new dwelling including a new driveway and basement garage. It is noted that the existing dwelling on the site benefits from a right of carriageway and property access via a shared driveway also used by No. 53A Wheeler Parade. This driveway provides access to a parking area at the rear of the existing dwelling. The new dwelling is proposed to have a new garage and vehicle crossing directly off Wheeler Parade however there is no mention in the DA material of the existing rights of carriageway being extinguished in conjunction with development application. It is also noted that rear gates are proposed under the development application which could potentially provide vehicular access to the rear of the dwelling. This would mean that the dwelling would have two points of vehicular access which would be contrary to Council's DCP Objective C2 9(c) to minimise the number of vehicle crossings in a street and Council's adopted practice of permitting only one point of vehicle access to a dwelling. As it is also proposed to provide pedestrian access to the new dwelling via steps adjacent to the new garage it is considered that both vehicular and pedestrian access right over the driveway serving No.53A could be extinguished if the new garage is constructed. The Statement of Environmental Effects advises that <i>"due to the steep slope of the driveway and the difficulty in safely exiting the site due to the limited sight distance to the north, the proposal intends to provide for independent driveway access to the site with improved vehicular safety through better sight lines and sight distances for drivers entering and leaving the site."</i> As the new driveway is sited closer to the bend and it appears that site lines would still be obscured by the adjacent embankment, the presence of the curve in the road and the gradient on approach it is unclear how sight lines to and from the new driveway will be improved. The PLM notes indicate that it was requested that the DA be accompanied by a sight line analysis. This has not been provided and should compare sightlines from the existing and proposed driveway and ideally demonstrate that sight lines in compliance with AS2890.1 section 3.2.4 (a) are to be provided. No details have been provided on the sizing or number of basement carparking spaces. It is unclear how many vehicles will be parked and what area will be designated for carparking or for other uses. Parking spaces should be marked and dimensioned on the plans to confirm that they are compliant with dimensions required in AS2890.1. The Statement of Environmental Effects also advises that vehicles will be able to enter and exit the site in a forwards direction from the new driveway. Swept path plots should be provided to demonstrate how vehicles will turn around on

Internal Referral Body	Comments
	site to exit in a forwards direction from the new garage. Finally, there is concern that the new garage does not provide adequately for pedestrian visibility at the property boundary. A sightline triangle at the point where the basement carpark meets the property boundary as required by AS2890.1 Section 3.2.4 (b) would normally be required however due to the topography this is unlikely to be achievable. This does however mean that the new driveway would result in an increased level of risk for any pedestrians using the western side of Wheeler Parade. In its current form the proposal is not considered supportable and should be reviewed taking account of the above comments with additional supporting information provided if the application seeks to retain the new driveway in its currently proposed location.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who raised no objections to the development, 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. 805851S_03 dated 31 May 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0004927802-01 dated 31 May 2021).

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

Commitment	Required Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	50	55

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment

The proposal was referred to Ausgrid who raised no objections to the development, subject to conditions.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	Complies
4.3 - Height of Buildings	8.5m	8.5m	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes

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

Detailed Assessment

Zone R2 Low Density Residential

Land use definition: WLEP 2011	Permitted or Prohibited
<i>Dwelling House means a building containing only one dwelling</i>	Permitted with consent

The underlying objectives of the R2 Low Density Residential zone:

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

Comment

The development provides housing for members of the community.

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

Comment

The land use proposed is permitted with consent and appropriate within the zone and does not impact on the day to day needs of residents.

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

Comment

The development provides an insufficient provision of landscaped open space and an inadequate setback of structures to the front boundary (Clauses B7 and D1 WDCP 2011). The proposal necessitates the removal of significant natural features on public land including rock outcrops and trees in order to provide for a private driveway on a site that already benefits from a driveway.

Given the removal of natural features, the proximity to and proportions of structures to the front boundary and the shortfall in landscaped open space, the proposal cannot be said to be characterised by a landscaped setting, nor that it is in harmony with the natural environment of Warringah / the Northern Beaches.

It is considered that the development does not satisfy this objective and is inconsistent with the R2 Low Density Residential zone.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Approx. 6.4m	-	Yes
B3 Side Boundary Envelope	(north) 5m	No encroachment	-	Yes
	(south) 5m	Several encroachments reaching a maximum height of 0.6m	12%	No
B5 Side Boundary Setbacks	(north) 0.9m	Basement - 0.9m House - min. 1m	- -	Yes Yes
	(south) 0.9m	0.9m	-	Yes
B7 Front Boundary Setbacks	(east) 6.5m	Basement - 0.6m GF Terrace - 1.7m Pool - 2.0m House - 6.4m	91% 74% 70% 2%	No No No No
B9 Rear Boundary Setbacks	(west) 6m	7.3m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (245.27m ²)	25.4% (156m ²)	37%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	No
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	No	No
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	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	No	No
D8 Privacy	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	No	No
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	No	No
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	No	No
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

The overriding objective of the Warringah Development Control Plan 2011 (WDCP) is to create and maintain a high level of environmental quality throughout Warringah. Development should result in an increased level of local amenity and environmental sustainability.

For the reasons elaborated upon in this report, the proposal is found to be unacceptable and does not achieve the objectives of the WDCP.

B3 Side Boundary Envelope

Description of non-compliance

The site is subject to a 5m side boundary envelope control to which vertical elements of a building (i.e. a wall) should not project above. The southern elevation of the house has several areas of encroachment reaching a maximum height of 0.6m thus representing a 12% variation to the control requirements.

Those non-compliant elements are shown in red and yellow on the below diagram:



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

Independently the side boundary envelope non-compliances may not seem significant (as per the above diagram) however taken in the broader context of the proportions of the building and other non-compliances, they are reflective of a visually dominant building representative of an overdevelopment of the site. A compliant development would require a second floor with greater side setbacks than the proposed, and increased side setbacks would result in lesser bulk and visual dominance. For that reason the development fails to meet this objective.

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

Comment

The side boundary envelope non-compliance does not directly contribute to any unreasonable loss of solar access or privacy to adjoining properties.

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

Comment

The development overall does not respond to the topography of the site as it largely seeks to remove it to a depth of approximately 7m. Notwithstanding that, in the drawing above the ground levels due southward of the house are reflective of the existing topography, and the development would still require the same envelope variations even if the basement were deleted in its entirety. Therefore, whilst the development as a whole has an inadequate response to the topography of the site and is not supported, the proposed envelope does respond to the topography.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

Clause B7 Front Boundary Setbacks requires that structures be set back from the front boundary by at least 6.5m and requires that the setback area be landscaped and generally free of any structures, basements, car parking and the like.

The proposed basement, swimming pool and overall house encroach within the 6.5m setback area.

In the pre-lodgement meeting the applicant was advised to provide a minimum setback of 2m from the front boundary for the basement and swimming pool including its fence any any other terraces. That 2m was required to be densely landscaped to screen the bulk of the building. Contrary to that advice the application instead proposes the following setbacks to the front boundary:

- Basement frontage: 1m (84.6% non-compliance).
- Swimming pool: 2m (70% non-compliance).
- Ground floor terrace: 1.7m (73.9%).
- House: 6.45m (1% non-compliance).

It is also noted that the ground floor garden/terrace fencing projects over the front boundary line into Council's road reserve and no owner's consent has been obtained for this encroachment (albeit this non-compliance could be readily resolved by an alternate fence design).

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 natural topography of the land makes it difficult for an open streetscape presentation to be provided given that a 6m high rockface exists immediately inward of the sites front boundary, for the width of the block. This development however reduces an already compromised streetscape presentation and sense of openness.

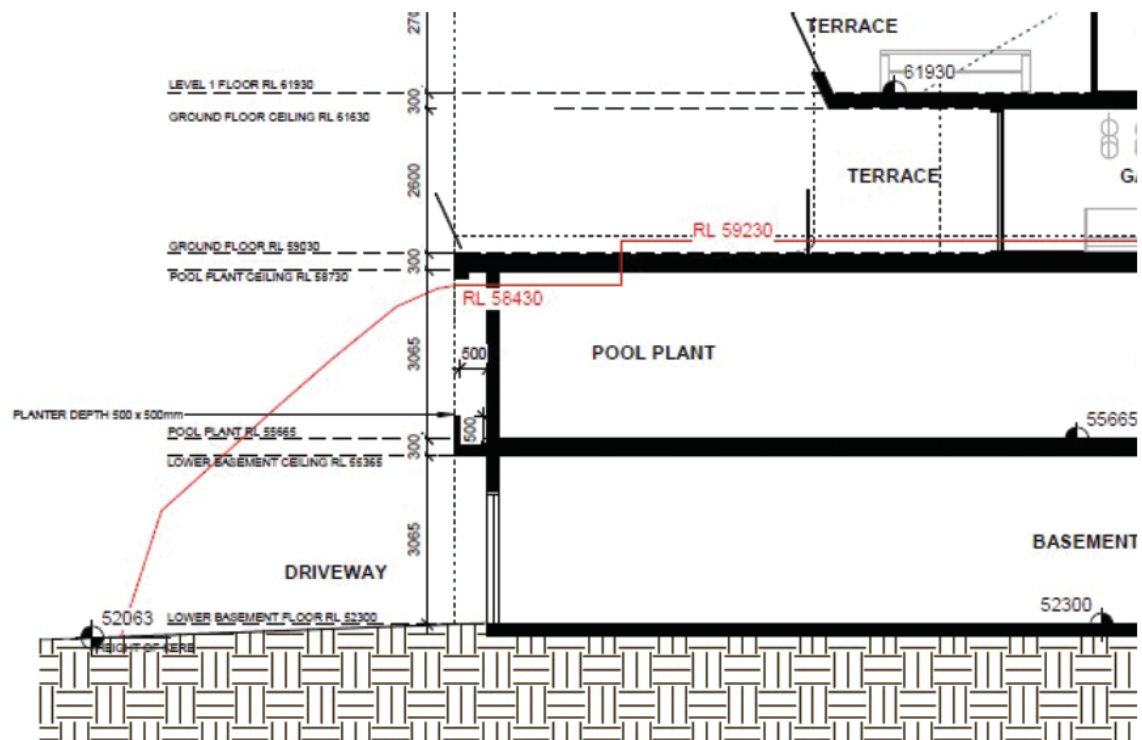
The development seeks to excavate the majority of the site frontage to accommodate the basement and swimming pool which in effect creates a 6.73m high solid wall positioned with a setback varying from zero to 0.5m to the front boundary, topped with a boundary fence with a minimum height of 1m. Not only is this structure almost 100% non-compliant with the front setback control, the height of the wall (with fence) right at the boundary results in a maximum wall height that exceeds the maximum prescribed by Clause B1 of the DCP.

The only attempt to screen the proportions of the aforementioned front wall is an elevated 0.5m wide by 0.5m deep planter box. That planter box is inaccessible and sits beneath the

overhanging slab of the ground floor terrace which would severely impede natural light to allow the plants to grow.

The proximity of the basement entry and structure to the front boundary is deficient of the control requirements and insufficient attempts to screen its bulk have been made despite Council's suggestions at the pre-lodgement meeting. The cumulative proximity of structure to the boundary, its height and the lack of landscaping do not result in a sense of openness, but rather create an overwhelming sense of enclosure when standing in front of the house.

The above-described situation is shown on the below sectional drawing, with the front boundary being the dotted line to the left:



Section 1 DRIVEWAY

SCALE: 1 : 100

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

Comment:

The proposed front setback is incongruent with the existing visual continuity and pattern of buildings and landscape elements within the street. Whilst there are varied setbacks of buildings to Wheeler Parade none (that have been identified) require a variation to the front boundary setback control as significant as that of the proposed. The adjoining no. 86 Headland Road to the south does somewhat alter the pattern of buildings in the street, however that is due to the fact that the building is on a corner block thus requiring any development to be close to the boundary.

The lack of landscaping in the front boundary setback area is inconsistent with surrounding properties and exacerbates the front boundary setback non-compliance and the bulk of the building.

The development therefore does not maintain the visual continuity and pattern of buildings and landscaped elements.

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

Comment

The presentation of a two storey wall located within the front boundary setback area that is unscreened by landscaping does not protect or enhance the visual quality of the streetscape.

- ***To achieve reasonable view sharing.***

Comment

The encroachment into the front boundary setback area is not considered to result in any unreasonable view loss from the public or private domain.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

C2 Traffic, Access and Safety

Council's Traffic Engineers have raised concern regarding the proposed driveway access as it has not been sufficiently demonstrated that the location of the new driveway would not give rise to increase hazard and risk for pedestrians and other motorists.

Further to that, the site benefits from an existing vehicular and pedestrian access right over the driveway serving No. 53A Wheeler Parade which, in effect, would result in the driveway having two legal vehicular access points which is contrary to Council's general practice of limiting dwellings to one driveway only.

In noting the above, a significant proportion of the issues raised in this assessment report stem from the proposed driveway and the consequent excavation required to provide car parking. It is considered that the retention of the existing access, and thus deletion of the proposed driveway and basement levels would result in a superior environmental, aesthetic outcome that is safer for the community.

C3 Parking Facilities

An objective of Clause C3 Parking Facilities reads:

- ***To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.***

As described earlier in this report under Section B7 Front Boundary Setbacks the proposed car parking facilities (including the garage and driveway) result in an unacceptable impact to the street frontage and

is not supported.

C7 Excavation and Landfill

The application and its accompanying documents are silent on why such a large basement is required to be excavated for a single dwelling house and provides minimal detail as to what this space is used for site with the exception of garaging vehicles, air conditioning and pool plant equipment. Both levels of basement have bathrooms and stair and lift access.

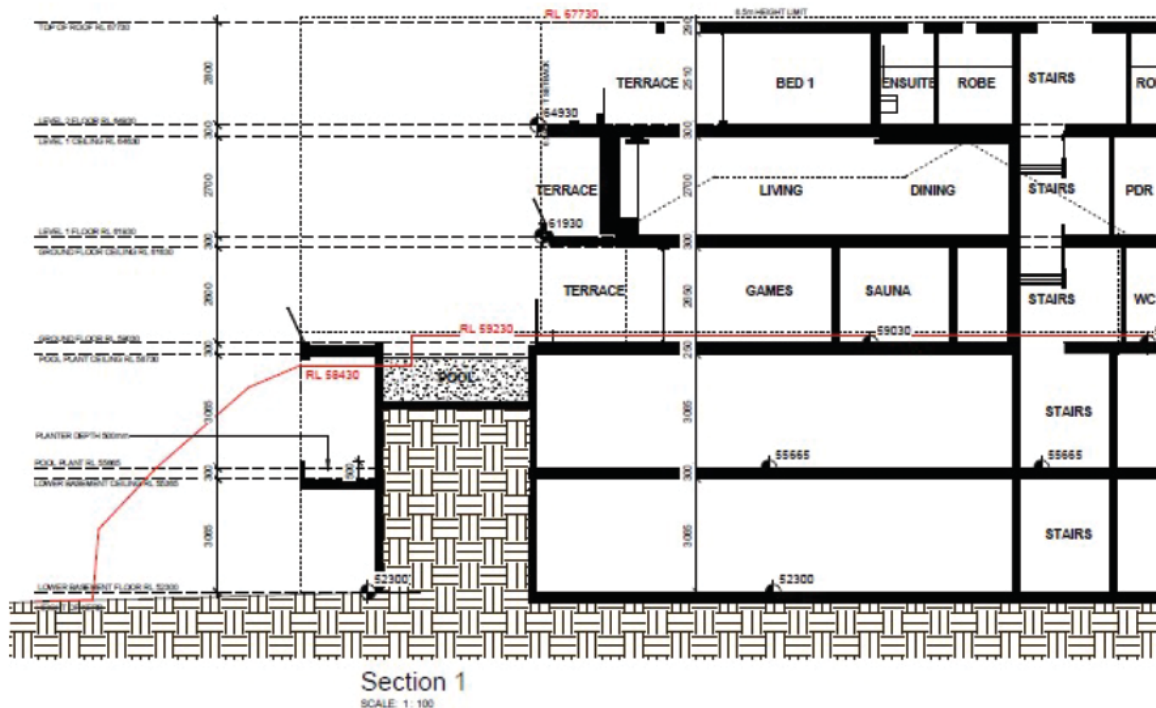
The level of excavation contravenes Requirements 2 of clause C7 which read as follows (emphasis added):

- 1. All landfill must be clean and not contain any materials that are contaminated and must comply with the relevant legislation.*
- 2. Excavation and landfill works must not result in any adverse impact on adjoining land.**
- 3. Excavated and landfill areas shall be constructed to ensure the geological stability of the work.*
- 4. Excavation and landfill shall not create siltation or pollution of waterways and drainage lines, or degrade or destroy the natural environment.*
- 5. Rehabilitation and revegetation techniques shall be applied to the fill.*
- 6. Where landfill is necessary, it is to be minimal and shall have no adverse effect on the visual and natural environment or adjoining and surrounding properties.*

Consequent of the excavation and the proposed vehicle access arrangements on Wheeler Parade, Council's Traffic Engineer has raised concern that the development will give rise to inadequate pedestrian visibility and thus an increased level of risk to pedestrians. The development therefore results in an adverse impact on adjoining public land.

Further to the above, the excessive proportions of the basement necessitate significant rock breaking excavation which shall severely disrupt neighbouring properties amenity for a prolonged period of time. A smaller basement (i.e. one that complied with the relevant setback requirements) would have a lesser impact on surrounding properties. The basement requires an estimated volume of 1,600 cubic metres of rock and soil to be removed from the site.

An extract of the provided sectional drawing is below showing the extent of the proposed basement:



The proposal is assessed against the underlying objectives of the control as follows:

- ***To ensure any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties.***

Comment

The existing frontage of the site to Wheeler Parade accommodates significant rock outcrops and vegetation. Whilst the current presentation is not formalised or well maintained it would be reasonably easy to improve. The application seeks to remove the entirety of natural features addressing the street and in its place construct a two-storey basement and swimming pool.

By way of removing all existing and significant natural features from the frontage of the site the excavation would have an adverse effect on the visual and natural environment as viewed from the public domain.

- ***To require that excavation and landfill does not create airborne pollution.***

Comment

Were this application to be approved a condition of consent could reasonably be imposed to ensure that the excavation does not create airborne pollution.

- ***To preserve the integrity of the physical environment.***

Comment

In this objective it is considered that 'integrity' pertains to retention of natural features where possible in their natural form. The removal of the entire frontage of the site including rock outcrops reaching a height of 6m and mature trees and vegetation, and replacing them with a

two-storey concrete basement cannot be said to preserve the integrity of the physical environment.

- ***To maintain and enhance visual and scenic quality.***

Comment

As described above, the removal of natural features and replacement with a large two storey basement is not considered to maintain or enhance the visual quality of the land.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

C9 Waste Management

The Waste Management Plan submitted with the development application neglects to account for the level of excavation proposed and where the subsequent rock and soil would be disposed of. The submitted report details that there would be between 5 and 10 cubic metres of excavated materials, to be reused for topsoil (where necessary). This quantum is severely deficient of the actual scale of excavation.

If approved, the applicant must compile a detailed and correct Waste Management Plan prior to commencing works. Such requirement is enforced by way of condition.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The site is subject to a landscaped open space requirement of 40% of the site area, thereby being 245.27 square metres (sqm) in this instance.

Requirement 1 of the control details the following to measure the area of landscaped open space:

- a) *Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation;*
- b) *The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;*
- c) *Landscaped open space must be at ground level (finished); and*
- d) *The minimum soil depth of land that can be included as landscaped open space is 1 metre.*

Taking the above into account the development is calculated to achieve a landscaped open space of 25.4% of 156sqm, thereby representing a 37% deficiency to the control Requirement.

It should be noted that garden areas (and the surface area of the swimming pool) that site beneath the roof overhang (i.e. *roofed areas*) are not counted as landscaped open space. The northeastern corner of the site is also not calculated as landscaped open space as the Section 3 drawing (C10.1) details a soil depth of 0.2m rather than the required 1m depth.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

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

Comment

The site benefits from a wide road reserve which, at present, is filled with large rock outcrops / faces and mature vegetation that crosses from Council's land onto the subject development site. The proposal necessitates the removal of half the width of the rock on Council's land, inclusive of all vegetation on that half.

Whilst the southern half of the sites frontage provides a reasonably dense landscaped setting when viewed from the Wheeler Parade, the northern half does not (note: this statement is made on the assumption that the southern half can and will be retained in its current form).

The northern half of the site, where the proposed new vehicular access point is requires the complete removal of all natural features on the 6.8m wide road reserve and proposes to mitigate that loss with a 0.5m wide elevated planter box atop of the new garage door. This design solution results in the a significant alteration to what is otherwise a natural looking streetscape and proposes a severely deficient landscape solution to ameliorate the impact.

Even if the planters proposed were significantly enlarged in size they would still be insufficient to counter the almost 7m deep loss of rocks and trees both on private and public land.

The development and its landscape outcome does not enable new plantings and does not enhance the streetscape.

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

Comment

The development does not conserve existing vegetation on the site, topographical features or habitat for wildlife. Whilst impacts to vegetation and habitat for wildlife can naturally redevelop over time, the loss of topographical features and the habitat that that provides cannot be replicated and does not grow back. The development thereby fails to achieve this objective.

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

Comment

The development does not provide for landscaped open space with dimensions that are sufficient to allow for the establishment of vegetation. In calculation of landscaped open space an area must have minimum widths of 2m, depths of 1m and not be covered by a roof or structure. With these limitations, the only calculable landscaped open space areas (excluding the surface area of the swimming pool) are the rear 7.35m of the site (the back garden) and a small void northwards of the stairwell. The back garden is sufficient in proportion to provide some landscape screening to the west.

The building proposed is large at three storeys (above ground) and does not provide sufficient landscaped areas to the north and south (sides) to mitigate the height of the development. It is considered that canopy trees are not a practical solution along these flank edges as the canopy would likely be severely obstructed by the roof overhangs or would damage them.

To the east facing Wheeler Parade the site is entirely reliant on Council's landscaping to screen private development. The aforementioned northern half the site (where the driveway sits) has an elevated garden (above the garage) with a soil depth of approx. 200mm. This depth is insufficient to grow anything meaningful to screen the building.

The development fails to provide sufficiently dimensioned landscaped areas to the north, south and east to allow for the establishment of vegetation to mitigate the height, bulk and scale of the building.

- ***To enhance privacy between buildings.***

Comment

The absence of appropriately proportioned vegetation to the northern and southern side boundaries combined with the multiple proposed floor-to-ceiling windows on all levels results in an unacceptable degree of overlooking into neighbouring properties, particularly those properties to the south along Headland Road. Were a compliant landscaped area be provided there would be greater opportunities for side boundary landscaping and thereby lesser privacy implications. The development therefore does not enhance privacy between buildings.

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

Comment

The site provides soft and hard landscaped areas sufficient to accommodate appropriate outdoor recreational opportunities to meet the needs of future occupants.

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

Comment

The site provides sufficient space for service functions, including clothes drying.

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

Comment

Council's Development Engineer has assessed the stormwater aspects of the proposal and raises no objections to water management.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

D7 Views

The development application was submitted and assessed during the COVID-19 pandemic of 2020-2021. This pandemic limited Council's ability to undertake view loss inspections and reduced residents desire to have Council officers visit their homes.

During the notification period two objections were received which raised view loss from two properties as a concern. In Council's letter to the applicant it was noted that after receipt of revised plans addressing the other concerns raised in that letter, that surveyed height poles would be required to be

erected on the site in order to facilitate a view loss inspection.

No revised plans were received and no height poles have been erected. Council attempted to visit both objecting properties to undertake a view loss analysis despite there being no height poles present. One objector provided a series of photographs in lieu of a site visit and the other objector has been uncontactable.

The objectives of Clause D7 Views are as follows:

- ***To allow for the reasonable sharing of views.***
- ***To encourage innovative design solutions to improve the urban environment.***
- ***To ensure existing canopy trees have priority over views.***

Whilst the submitted Statement of Environmental Effects does include a summary of potential view loss, the absence of height poles or any computer-generated analysis of views results in Council having insufficient information to ensure that the objectives of the clause are met. Particularly, Objective 2 goes towards innovative design and the tests established in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140* as to whether a more skillful design could still provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.

The Council has insufficient information to establish that the development would not have an unacceptable impact on the views enjoyed by neighbours and as such, this formulates a reason for refusal.

D8 Privacy

The proposed house has floor-to-ceiling height windows on all elevations and make up approximately half of the external surface area of the building.

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 quantum and location of windows throughout the proposed house afford direct and uninterrupted sight-lines into the private open spaces of neighbouring properties including No. 51 Wheeler Parade, No. 55 Wheeler Parade and Nos. 86, 88 and 90 Headland Road. Similarly, the design and siting of the building and windows provides neighbouring properties direct views into the proposed building.

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

Comment

The development is reliant upon the retention of landscaping in perpetuity to mitigate overlooking into surrounding properties. The proposal relies on planter boxes and existing hedging which is on neighbouring land. Were this vegetation to fail or be removed at any point in the future there would be no screening of sightlines from the subject property.

The design of having a dwelling house in a dense urban areas with three-storeys of floor-to-ceiling windows on all sides is inappropriate and is not found to be an innovative or acceptable design solution.

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

Comment

The development is not anticipated to impact on the existing provision of personal and property security for occupants and visitors of the development, however it is considered that an alternative design with lesser large windows, thereby limited sightlines in and out of the building, would provide an improved degree of personal and property security.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

D9 Building Bulk

Merit consideration

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

- ***To encourage good design and innovative architecture to improve the urban environment.***

Comment

The development is a contemporary form of architecture, the typology of which would be well suited for the Wheeler Parade streetscape, however the proportions of the building are considered to be excessive and therefore, not of a responsive and sensitive design.

Putting aside the angular blade walls and planter boxes, the proposal is a three storey rectangular building is sited on a flat platform of land. The proportions and thus bulk of the building are inconsistent with those of other houses of similarly sized flat blocks. In demonstrating the excessive proportions it is useful to consider the floor space ratio (FSR) of the building, while acknowledging that that this not a control under the DCP or LEP. Notwithstanding, in this instance the proposal results in a dwelling house in an R2 zone with an FSR of approximately 0.85:1 which is significantly higher than what is anticipated to be developed on the land (which is typically 0.5:1 for low density residential zonings).

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

Comment

The shortfall in landscaped open space and plantings combined with the scale of a three-storey rectangular dwelling house results in a large visual mass when viewed from adjoining properties. That massing is not considered to minimise the visual impact of the development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 is not supported, in this particular circumstance.

D16 Swimming Pools and Spa Pools

Description of non-compliance

Clause D16 does not permit swimming pools in the front setback area. The proposal includes an in-ground swimming pool located 2m off of the front boundary.

Merit consideration

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

- ***To ensure swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.***

Comment

The proposed swimming pool does not necessitate the removal of any significant vegetation on the site and is not visible from the street given the elevated position of the site. The location of the pool in the front setback does not unreasonably impact on residential amenity.

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

Comment

In the circumstance of this application the location of the swimming pool does not detract from the streetscape or from neighbouring amenity. Were the pool to be located in the back garden it may result in a reduction to the landscaped buffer around the site and thereby detract from the amenity of neighbouring houses.

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.

E6 Retaining unique environmental features

Existing development in the locale has largely destroyed the natural topography of the land and its rock outcrops, seldom leaving evidence of unique environmental features visible from the public domain. No. 53 Wheeler Parade benefits from a large and significant rock outcrop in Council's road reserve in front of the property. Whilst that outcrop has been significantly altered over time to accommodate driveways and the like, the portion in front of this house is reasonably intact and is considered a unique feature that distinguishes the site from its surroundings.

The single objective of Clause E6 - Retaining unique environmental features on site reads:

- ***To conserve those parts of land which distinguish it from its surroundings.***

The notes of that clause state the design solutions should include:

- *Choosing parts of the site to develop where features are not present; and*
- *Locating buildings to take advantage of environmental features.*

These two notes are of particular relevance for this application as the site already has an alternate vehicular access that could quite easily be incorporated into the current design. By virtue of not using

that access and proposing a two storey basement the development requires the removal of the rock outcrop (i.e. the most environmentally unique area on the site) and does not locate the driveway access and car parking in a location to take advantage of (i.e. protect) environmental features.

On that basis the design is considered an inappropriate solution for the site that does not respond to nor retain the unique environmental features on the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not 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 \$17,660 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,766,000.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP

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

This report describes that the proposed development of 53 Wheeler Parade, Dee Why pursuant to Development Application no. 2021/0905 is an inappropriate outcome for the site.

The proposal necessitates the removal of a substantial and unique rock escarpment on public land in order to obtain vehicular access to the street when the site already benefits from a right of carriageway along an existing driveway. The access proposed results in an inadequate landscape outcome for the site and the public domain and does not provide for a safe vehicle or pedestrian environment. The excavation works, driveway access and basement car parking are all inappropriate for the site.

The proposed dwelling is too large for the site and provides a severely deficient quantum of landscaped open space that could otherwise be used for the establishment of trees to screen the excessive bulk of the building.

The design of the building results in an unacceptable loss of privacy to neighbouring properties and is reliant on private landscaping (on a different site) to mitigate overlooking.

Inadequate information is provided by the applicant to ascertain whether any view loss caused by the proposal is acceptable or not.

The application fails to provide or obtain Council's owners consent for works in the road reserve.

The application has attracted submissions from nine surrounding households all objecting to the proposed development for the reasons described throughout this report.

The proposal is an overdevelopment of the site and is not in the public interest. It is therefore recommended that the Development Determination Panel refuse Development Application no. 2021/0905.

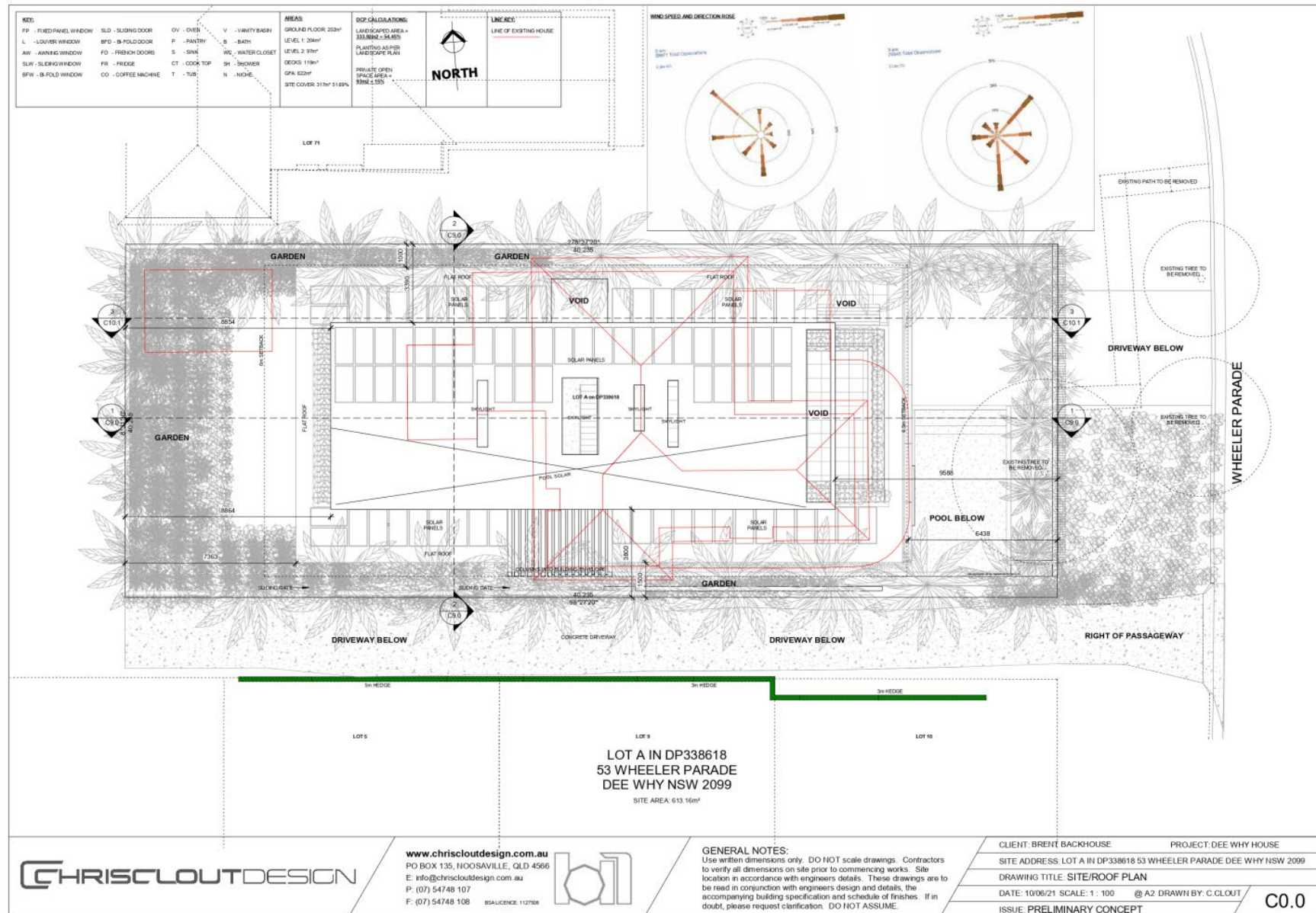
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

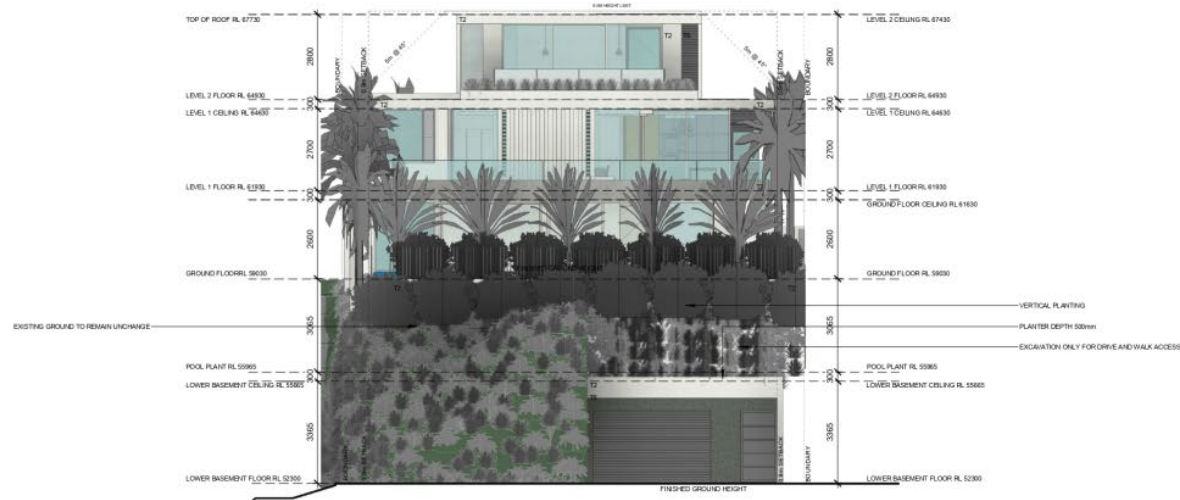
RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/0905 for the Demolition works and construction of a dwelling house including a swimming pool on land at Lot A DP 338618, 53 Wheeler Parade, DEE WHY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following Clauses of the Warringah Development Control Plan:
 - a) Clause A.5 Objectives
 - b) Clause B3 Side Boundary Envelope
 - c) Clause B7 Front Boundary Setbacks
 - d) Clause C2 Traffic, Access and Safety

- e) Clause C3 Parking Facilities
 - f) Clause C7 Excavation and Landfill
 - g) Clause D1 Landscaped Open Space and Bushland Setting
 - h) Clause D8 Privacy
 - i) Clause D9 Building Bulk
 - j) Clause E1 Preservation of Trees or Bushland Vegetation
 - k) Clause E6 Retaining Unique Environmental Features.
3. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted with regards to view loss analysis to enable the assessment of the application in accordance with the provisions of Clause D7 Views of the Warringah Development Control Plan.
4. Pursuant to Clause 49(1)(a) of the Environmental Planning and Assessment Regulation 2000 the development application does not have the owners consent of the Northern Beaches Council being an owner of part of the land to which the development application relates (being the road reserve of Wheeler Parade, Dee Why).
5. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.





EAST ELEVATION
1:100



WEST ELEVATION
1:100

WALL FINISH LEGEND

- T1: OFF FORM CONCRETE FINISH - NATURAL RAW CONCRETE
- T2: POLISHED CONCRETE FINISH - NATURAL RAW CONCRETE
- T3: POLISHED CONCRETE FINISH - NATURAL RAW CONCRETE
- T4: POLISHED CONCRETE FINISH - NATURAL RAW CONCRETE
- T5: POLISHED CONCRETE FINISH - NATURAL RAW CONCRETE
- T6: POLISHED CONCRETE FINISH - NATURAL RAW CONCRETE
- T7: POLISHED CONCRETE FINISH - NATURAL RAW CONCRETE
- T8: POLISHED CONCRETE FINISH - NATURAL RAW CONCRETE
- T9: POLISHED CONCRETE FINISH - NATURAL RAW CONCRETE
- T10: POLISHED CONCRETE FINISH - NATURAL RAW CONCRETE
- T11: POLISHED CONCRETE FINISH - NATURAL RAW CONCRETE

WALL COLOUR LEGEND

DRIVEWAY PEBBLECRETE BORAL EXPOSE ECLIPSE	TIMBER WEATHERED WESTERN RED CEDAR OR KNOTWOOD NATURAL WEATHERED TIMBER	SECONDARY WALL COLOUR PAINT: RESENE 'BLACK HAZE' N52-005-101	MAIN WALL COLOUR PAINT: RESENE 'DOUBLE STACK' N57-003-146	WINDOWS & DOORS ALUMINUM ANODISED CLEAR	OFF FORM CONCRETE FRONT FENCE	ROOF PAINT: RESENE 'DOUBLE STACK' N57-003-146
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CHRIS CLOUD DESIGN

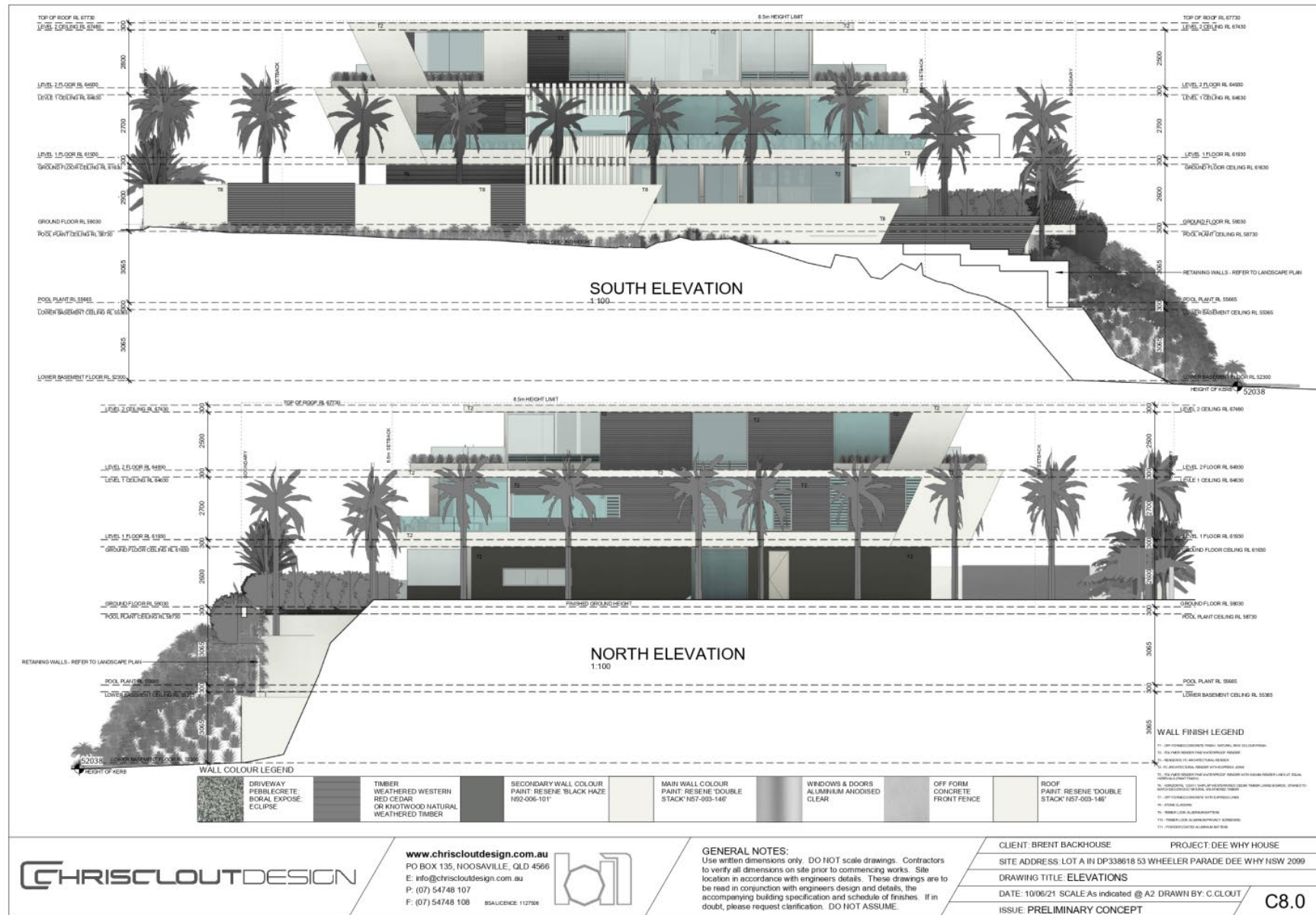
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F: (07) 54748 108



GENERAL NOTES:

Use written dimensions only. DO NOT scale drawings. Contractors to verify all dimensions on site prior to commencing works. Site location in accordance with engineers details. These drawings are to be read in conjunction with engineers design and details, the accompanying building specification and schedule of finishes. If in doubt, please request clarification. DO NOT ASSUME.

CLIENT: BRENT BACKHOUSE	PROJECT: DEE WHY HOUSE
SITE ADDRESS: LOT A IN DP338618 53 WHEELER PARADE DEE WHY NSW 2099	
DRAWING TITLE: ELEVATIONS	
DATE: 10/06/21 SCALE: As indicated @ A2	DRAWN BY: C. CLOUD
ISSUE: PRELIMINARY CONCEPT	C6.0



ITEM 3.2**DA2021/0517 - 55 WHEELER PARADE, DEE WHY -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL****REPORTING MANAGER** Tony Collier**TRIM FILE REF** 2021/795514**ATTACHMENTS**
1 Assessment Report
2 Site Plan and Elevations
3 Clause 4.6
4 View Impact Photos**PURPOSE**

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuses** Development Consent to **DA2021/0517** for Alterations and additions to a dwelling house including a swimming pool on land at Lot B DP 338618, 55 Wheeler Parade, Dee Why, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0517
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot B DP 338618, 55 Wheeler Parade DEE WHY NSW 2099
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Owner:	Antaine Seamus Furlong Elizabeth Rebecca Furlong
Applicant:	Antaine Seamus Furlong
Application Lodged:	17/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/05/2021 to 04/06/2021
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 14%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 2,202,225.00

EXECUTIVE SUMMARY

The application is referred to the Development Determination Panel (DDP) as the proposal involves a breach of the height of building development standard of up to 14%. The application also has received four (4) objections during the notification period and the cost of works is over \$1 Million requiring the application to be determined by the DDP.

The application was notified for a period of 14 days in accordance with the Northern Beaches Community Consultation Plan. As a result of the notification period, four (4) submissions were received objecting to the proposal. The issues raised include view impact, solar access impact, privacy impact, geotechnical hazard and building bulk/scale.

The application is subject to a Class 1 Appeal that was lodged with the Land and Environment Court on 29 September 2021.

When considering the proposal, it is important to recognise that there is an existing consent granted under DA2019/1175 by the Land and Environment Court (LEC) for 'Alterations and Additions' to the dwelling at No. 55 Wheeler Parade. The current development application proposes a new scheme with alternate floor planning which include shifting portions the floor area towards the northern boundary of the site. It is acknowledged that the shifting of the building towards the northern boundary results in some benefit to solar access and privacy for the southern adjoining neighbours.

However, the resulting impact to the view corridor towards Curl Curl Beach for the adjoining northern property further and unreasonably impinges upon the view corridor already approved by the NSW Land and Environment Court. A view assessment is undertaken later in this assessment report and the proposal is found to result in an unsatisfactory view sharing outcome and the application is recommended for refusal for this reason. The visual dominance resulting from the extent of the northern façade is also of concern and forms a reason for refusal.

The application proposes a departure from the height of building development standard, building envelope control, wall height control and landscape open space requirement. However, the extent of these non-compliances are generally consistent with those under the LEC approval and are therefore do not form further reasons for refusal.

The application is therefore recommended for refusal to the DDP for the reasons outlined in this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks alterations and additions to a residential dwelling and new swimming pool. Specifically, the proposed development consists of:

- Alteration to lower ground floor including alteration to garage, addition of a gym, laundry, cellar and stairs;
- Alteration to the ground floor level including demolition of existing pool and construction of a new pool on southern side, new pool deck, alterations to ground floor plan to include five (5) bedroom, each bedroom consisting of an ensuite, new dwelling entrance and feature landscape courtyard; and
- Alteration to first floor to include kitchen dining room, living room and outdoor living area.

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 - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot B DP 338618 , 55 Wheeler Parade DEE WHY NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Wheeler Parade. The site is a battle axe allotment that is rectangular in shape with access provided by a vehicular driveway off Wheeler Parade. The site is 15.24m wide and a depth of 40.29m. The site has a surveyed area of 886.2m². The site is located within the R2 Low Density Residential zone and accommodates an existing three storey residential dwelling (garage below, with two stories above). The site eastern portion of the site is relatively level. The western half of the site slope upwards towards the north-western corner with a rise of approximately 3m towards the north-western corner. The site is void of any significant canopy trees or landscape planting, apart from low lying shrubs and two recently planted trees adjacent to the northern boundary. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by two and three storey detached residential dwellings. Many of

the surrounding sites have been gradually redeveloped in the recent years. Immediately to the west of the site is Wingala Reserve.

To the north is a two and three storey dwelling (two storeys with garage under), to east is a single storey dwelling, to the south-east is a single storey dwelling, to the south are two and three storey dwellings.

Map:



SITE HISTORY

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

- Application **DA2011/0976** for alterations and additions to a dwelling house was approved by Warringah Council on 10/09/2011.
- Application **DA2019/1175** for alterations and additions to a dwelling house was refused by the Development Determination panel 02/06/2020. A Class 1 Appeal for the refusal of this application was lodged with the Land and Environment Court. Consent was granted by the Land and Environment Court under DA2019/1175 via a Section 34 Agreement on 22 December 2020.
- The subject development application **DA2021/0517** was lodged on 17/05/2021 for alterations and additions to a dwelling house.
- Council received notice that a Class 1 Appeal was lodged with the Land and Environment Court on 29/09/2021 for the subject application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent. <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. <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. <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 could be addressed via a condition should consent be granted. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <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 could be addressed via a condition should consent be granted. <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 could be addressed via a condition should consent be granted.

Section 4.15 Matters for Consideration	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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, being a residential dwelling within the R2 Zone.
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	This assessment has found the proposal to be contrary to the relevant requirement of view sharing and building bulk contained within the WDCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/05/2021 to 04/06/2021 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 4 submission/s from:

Name:	Address:

Name:	Address:
Mariangela Agostino	51 Wheeler Parade DEE WHY NSW 2099
Mr David William Martin	51 A Wheeler Parade DEE WHY NSW 2099
Lisa Jane Comport	96 B Headland Road NORTH CURL CURL NSW 2099
Mr Sherif Victor Hanna	94 Headland Road NORTH CURL CURL NSW 2099

The following issues were raised in the submissions:

- **View impact.**
- **Solar access impact.**
- **Privacy impacts.**
- **Building Bulk, Scale and Building Height.**
- **Geotechnical Impacts on adjoining properties.**
- **The proposal is not 'alterations and additions'.**

The matters raised within the submissions are addressed as follows:

- **View Impact**

Comment

A detailed discussion regarding view impacts is contained later in this assessment report.

In summary, the proposal is not found to provide a reasonable view sharing outcome and is recommended for refusal in this regard.

- **Solar Access**

Comment

A detailed assessment of solar access is contained later in this assessment report.

In summary, the proposal was found to provide a satisfactory outcome with regards to overshadowing in accordance with Clause D6 of the Warringah Development Control Plan 2011 and is consistent with the LEC approval.

This issue does not form a reason to refuse the application.

- **Privacy Impacts**

Comment

A detailed assessment of privacy is contained later in this assessment report.

In summary, the proposal was found to provide a satisfactory outcome with regards to privacy in accordance with Clause D8 of the Warringah Development Control Plan 2011 and is an improvement to the LEC approval.

This issue does not form a reason to refuse the application.

- **Building Bulk, Scale and Building Height**

Comment

A detailed assessment of these issues are contained in this assessment report. Of importance, the long, unarticulated length of wall along the northern elevation is considered to be visually dominant, lacks articulation and creates a visual impact for the adjoining property.

In this regard, the application is recommended for refusal.

- **Geotechnical Impacts on adjoining properties**

Comment

The application is accompanied by a Geotechnical Report which makes recommendations for the development and an assessment regarding the geotechnical risk to surrounding properties.

In this regard, the proposal satisfies Council's requirements with regards to landslip risk.

- **The proposal is not 'alterations and additions'**

Comment

The previous development application (DA2019/1175) which was of a comparable size, scale and nature was refused by Council for a number of reasons, including Council not being satisfied that the proposal met the definition of 'alterations and additions'.

Notwithstanding, the application was ultimately approved (with amendments) by the NSW Land and Environment Court (LEC) as a proposal for 'alterations and additions' (a copy of the approved plans form an attachment to this report).

The proposed development is of a comparable nature, style and size to that approved via the LEC and therefore, this issue does not form a reason for refusal and Council can be satisfied that the development is for 'alterations and additions'.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported subject to conditions The proposal is for demolition of components of an existing building and alterations and additions to the building, including new pool and landscape works. The application is assessed by Landscape Referral against Warringah Development Control Plan 2011, including but not limited to the following clauses: • D1 Landscaped Open Space and Bushland Setting. • E1 Preservation of Trees or Bushland Vegetation.

Internal Referral Body	Comments
	The plans indicate construction over, but not proposing removal of, a rock outcrop retained under previous approvals, which is supported. It is noted that the landscape area around the rock is located under an upper terrace, however the area does not appear to have been included in landscape area calculations, which is considered to be the correct approach, the area being under a roof. However, as the area is open on three sides and the roof located several metres above, the proposed treatment is considered viable and no objections are raised to that component of the works. The plans indicate that a roof garden is to be located above the master bedroom at the eastern end of the dwelling, however it is unclear how the area can be maintained as no indication of access is shown on the plans. The roof garden is not objected to, however the applicant may wish to consider how maintenance of the garden is to be achieved. The proposed re-planting around the site will require removal of some vegetation, however the replacement planting proposed is considered to be an acceptable replacement. No objections are raised to the proposal subject to conditions as recommended.

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 may be included as a condition of consent if the application should be approved.

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. A395844-02 dated 23 March 2021).

The Certificate confirms that the proposal will meet the NSW government's requirements for sustainability it built in accordance with the set out commitments.

A condition may be included in a consent should this application be approved.

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 may be included as a condition of consent if the application should be approved.

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?	No
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
4.3 - Height of Buildings	8.5m	9.7m	14.1% (+1.2m)	No

Compliance Assessment

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

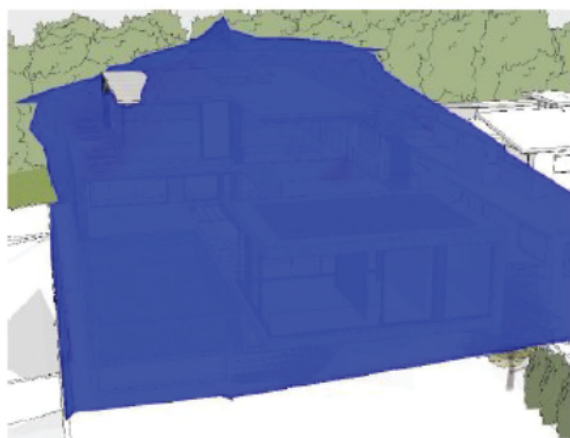
Detailed Assessment

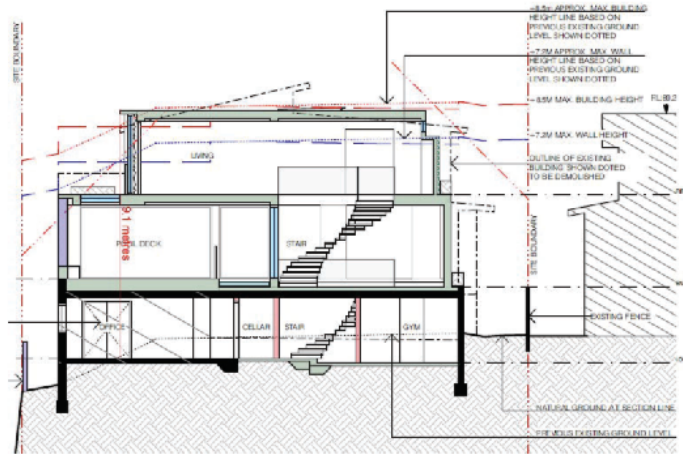
4.6 Exceptions to development standards

Description of non-compliance

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.7m
Percentage variation to requirement:	14%

Figure 2B – 8.5m Height Plane Measured from Previous Existing Ground Level (Dwelling After Alterations/Additions)





The non-compliance is limited to the south-western corner of the building and is partially as a result of the topography of the land, with the land falling away as a result of previous excavation at the south-western corner.

The above figure on the left demonstrates the 8.5m height plane of the proposed development. The ridge line of the south-western corner of the first floor was approved at RL69.21 under the LEC approval. The proposed development is at RL 69.41 (i.e. +0.2m) at the south-western corner and therefore, the proposal consists of a similar departure from the development standard as approved under the previous application by the LEC.

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.

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:

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:

Compliance with the development standard is unreasonable or unnecessary

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons.

The proposal achieves the objectives of the height control. The objectives of the control are noted and commented upon below:

The objectives for the height control are as follows:

- (a) To ensure 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.*

The proposal achieves the above objectives as detailed in the following assessment.

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

The proposed building, after completion of alterations and additions will remain of a similar bulk, scale and height as the existing dwelling. Building bulk and scale, as measured by assessable gross floor area (GFA), above lower ground floor level is increased by only 8m² (2.72%) from 294m² to 302m². The proposed extension of the building footprint (the master bedroom suite) is located on the higher northern side of the site and is fully compliant with height, setback and building envelope controls.

The RL of the proposed roof to Level 1 is similar to the RL of the roof of the neighbouring dwelling to

the north at 51A Wheeler Parade. The height and scale of the building is compatible with existing development to the north, east and northeast.

Due to the significant drop in land levels on properties to the south, there is a building height difference equating to almost 2 storeys. However, the height relationship to the properties to the south is not materially different from the height relationship of the existing dwelling on the development site to these properties.

The westerly extension of Level 1 will increase the height and scale of the building as viewed from the neighbouring properties to the south. However, the combination of a generous 3.7m building setback to the southern side boundary and the built form backdrop of the existing elevated dwelling at No. 51A Wheeler Parade ensures that height and scale of the extended Level 1 will be compatible with the existing built form, as viewed from the south.

Land to the west comprises a public reserve. The height and scale of the western elevation is substantially the same as the western elevation of the existing dwelling. Due to the reconfigured roof, there is a marginal lowering of the building at the western elevation.

The proposed development is considered compatible with the height and scale of the existing development on the site and with surrounding and nearby development.

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

As demonstrated in the SEE, the proposed alterations and additions will result in minimal change to the existing visual outlook from neighbouring properties to the south and the public domain. The proposed additions, where they extend above the 8.5m maximum building height do not materially increase disruption of views, privacy or solar access to neighbouring properties.

Visual impact on the public reserve to the west will not be increased. The height encroachment does not impact on views or outlook from properties to the north or east. Any view or visual impact to these properties is limited to the proposed easterly extension of Level 1. However, the easterly extension comprising the master bedroom suite has fully compliant height and setbacks and does not encroach into the side building envelope.

There is no reduction of views from the public domain. Views from dwellings located on residential properties around the site have their primary views from living rooms and adjoining private open space orientated away from the subject land and will remain unaffected.

The 2 storey dwelling immediately to the north of the subject land at 51A Wheeler Parade, has district and ocean views to the east, north and northeast from living rooms and adjoining private open space. This dwelling also has southeast views across the development site from the windows of 2 ancillary rooms (a bedroom and a study), which will be partially obstructed. However, there will be no impact on views from primary rooms and adjoining terraces, as these views are to the north, east and northeast.

With respect to view impacts on No. 51A Wheeler Parade, reasonable view sharing is achieved on the basis that the views obstructed are across a side boundary within the primary building area of the site, are to secondary rooms and existing expansive district and ocean views from primary rooms/terraces to the north and northeast are unaffected. As noted above, any view impacts on the property to the north are impacted by the easterly addition, which is fully compliant in terms of height, setbacks and building envelope. The portion of the building, where it extends above the 8.5m building height control, has no view impact and lowering the building to 8.5m in this location would not result in any enhancement of views.

As demonstrated in the SEE the proposal will have minimal impact on neighbour privacy compared to the existing dwelling. Reducing maximum building height to 8.5m would not in any way reduce privacy impacts. The proposed development results in a net improvement to neighbour privacy.

As demonstrated in the SEE, the proposal results in minimal increase in overshadowing of neighbouring properties to the south. The additional building height above 8.5m does not cast shadows over any solar access sensitive areas of neighbouring properties.

The proposed development, at the height proposed, has a minimal and satisfactory impact on visual outlook, views, privacy and solar access of neighbouring properties.

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

The proposed alterations and additions will have minimal impact on the scenic quality of the existing bush environment adjoining the western rear boundary of the development site.

The height and scale of the western elevation is substantially the same as the western elevation of the existing dwelling and there is no reduction in building setback to the western boundary.

Due to the reconfigured roof, there is in fact a marginal lowering of the building for the roof ridge at the rear, resulting in a minor reduction in visual impact, as viewed from the bushland reserve.

The subject land is located more than 600m from the coastal foreshore and as such will appear as a relatively minor element in the view corridors extending west from the coastline. As viewed from the coast, the proposed building, after the alterations and additions are completed, will appear substantially the same as the existing dwelling, given the significant viewing distance. The proposal will have no adverse impact on the scenic quality of Warringah's coastal environment.

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

The proposed development is substantially hidden from view from Wheeler Parade, due to level differences and the screening effect of existing dwellings to the north, east and southeast of the site. There is a narrow view corridor extending up the access handle driveway off Wheeler Parade. However, given the separation distance and narrowness of the view, only a very small portion of the additions will be visible.

Due to the dwellings to the south being located at a much lower land level, the uppermost portion of the dwelling will be visible from Headland Road, located almost 60m to the south. However, the first-floor addition will substantially be subsumed into the elevated built form backdrop provided by the existing dwelling to the north at No 51A Wheeler Parade.

There is only minor change proposed to the western portion of the built form, facing toward the bushland public reserve to the west. If anything, the western portion of the building will have a slightly reduced visual impact compared to the existing dwelling.

Those portions of the building extending above the 8.5m maximum building height control have no privacy, view or visual impact on existing dwellings in the locality. The shadow diagrams indicate that shadows cast by those portions of the building that extend above 11m in height, are substantially contained within the shadows cast by the height compliant portion of the building.

Given the excavated site context, the sloping nature of the site, the integration of the additions within

the existing built form and the context of neighbouring topography and development, it is considered that the proposal meets objectives of the maximum building height control.

Compliance would result in a poorer planning outcome.

One of the objectives of Clause 4.6 is to allow better outcomes to be achieved. In this case, as discussed above, a better architectural, urban design and occupant amenity outcome is achieved by allowing a height breach, facilitating a more integrated design outcome and more appropriate floor to ceiling height clearances.

It is possible to extend the building further to the east on its northern side and locate more of Level 1 further to the north, clear of the excavated lower ground floor to achieve height compliance. While achieving a height compliant outcome, this option would reduce the amenity of the adjoining property to the north at 51A Wheeler Parade in terms of visual outlook and views and compromise the overall architecture of Level 1 of the proposed addition by unnecessarily increasing its length.

The proposed location of the living room, while numerically encroaching into the 8.5m maximum building height due to the excavated nature of the site, below the living room, offers a more equitable balance of amenity impacts between neighbouring properties to the south and the adjoining property to the north (51A Wheeler Parade). A better planning outcome is achieved by allowing the height encroachment for a limited portion of the first-floor level. Amending the design to achieve strict numerical compliance offers no benefits in terms of urban design, planning or amenity outcomes.

There are sufficient environmental planning grounds to justify contravening the development standard.

The numerical height non-compliance results in no increase in environmental impact compared to a complying height and offers the benefit of facilitating alterations and additions which provide for an integrated building form over the building, as a whole. The alternative of reconfiguring Level 1 to increase southern side setback and extend it further east would compromise the amenity and architecture of the building, for no material benefit.

The non-compliances primarily arise from the excavated nature of the southern portion of the site and the slope of the land. In such circumstances allowing some variation in the height control is justifiable, particularly where a better planning outcome is achieved.

The consent authority must also be satisfied that the proposal meets the objectives of the standard and the objectives of the subject zone. As discussed above the proposal meets the objectives of the height standard and as detailed in the SEE and in this clause 4.6 submission, also meets the objectives of the B4 Mixed Use zone [sic].

In determining to support a variation to a development standard, the consent authority must be satisfied that 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 to be carried out. This clause 4.6 submission has demonstrated that the proposal is consistent with the objectives of the height standard and with the objectives of the R2 Zone.

It is in the public interest to support a variation to a development standard where it is consistent with the objectives of the development standard and the zone objectives, in circumstances where a development achieves a better planning outcome.

Requiring the design of the development to be amended to achieve numerical compliance with the maximum building height standard would require more of the first-floor level to be relocated alongside

the northern boundary, where the land has not been excavated. Such an outcome would result in Level 1 of the building exhibiting greater apparent bulk, length and height. The proposed design avoids this outcome by presenting less apparent bulk, length and height in a built form that is better aligned with the objectives of the height standard and the zone objectives, compared to a numerically compliant design solution.

Council Comment

The statement provided by the applicant is generally concurred with in that the area of non-compliant building height does not result in an unreasonable amenity impact when considered against the WDCP. The area of non-compliant building height does not have a direct view impact. A view assessment for other aspects of the development is carried out elsewhere within this report.

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 the 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 building height is considered to be visual compatible with those surrounding on Wheeler Parade and Headland Road. There is a prevalence of three storey dwellings in the vicinity of the site that the proposal would not be visually different from.

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

Comment

The portion of non-compliant building does not have a direct consequence in terms of views. Privacy is reasonably retained for the adjoining properties as discussed in detail later in this report along with solar access.

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

Comment

The proposal is not considered to be visually dominant or excessive when viewed from the adjoining reserve and is of a similar scale to the existing building. The building maintains the general height of the existing building on the site as viewed from Wingala Reserve and from a distance upon the ridge.

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

Comment

The building will not be visually prominent from the road given it is a battle axe lot. The building is of similar height presenting to Wingala Reserve.

Objectives of the zone

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

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

Comment

The proposal provides alterations to a residential dwelling, consistent with the objective.

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

Comment

Not applicable to the proposal.

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

Comment

The proposal provides a reasonable area to establish landscaping within the development site. The setback to Wingala Reserve is not changed via the proposed alterations and additions.

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	S34 Approval	Proposed	% Variation*	Complies
B1 Wall height	7.2m (Measured at side boundary)	North: 6.0m to 8.7m South: 7.3m to 10m	North: 6.0m to 8.7m South: 7.8m to 10m	21% 38%	No
B3 Side Boundary Envelope	North 5m x 45°	Within	Outside: 300mm	100% (0.3m)	No
	South 5m x 45°	Outside: 1.6m	Outside: 1.4m	12.5% (0.2m)	No
B5 Side Boundary Setbacks	North 0.9m	Lower: 1.9m Ground: 1.9m First: 2.8m	Lower: 1.9m Ground: 2.8m First: 3.4m	N/A	Yes
	South 0.9m	Lower: 1.35m Ground: 1.8m First: 3.9m	Lower: 1.35m Ground: 1.35m First: 3.7m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	10.19m	10.19m	N/A	Yes
B9 Rear Boundary Setbacks	6.0m	1.74m	1.74m	71% (4.26m)	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (354.5m ²)	19.5% 173.2sqm >2m (262sqm including <2m / 29.6%)	20.3% 180sqm >2m (258sqm including <2m / 29.1%)	49.2% (174.5m ²)	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
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	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
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
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The DCP control requires a maximum wall height of 7.2m from the existing ground level.

The proposed northern elevation has variable wall height of between 6.0m and 8.7m. The proposed southern elevation has a variable wall height between 7.8m to 10m, as measured from the side elevation from the boundary existing boundary level, both non-compliant with the control.

As part of the assessment of the proposal, it is relevant to compare the proposed development with the LEC approved plans, which also included a non-compliance with the wall height control of up to similar heights. It is also important to note some of the non-compliances are resulting from the existing building on the site.

The maximum wall height of the proposed development is consistent with the LEC approved plans. The bulk of the building and wall height has been pushed towards the northern boundary of the site, which does result in an improvement for solar access outcomes for the properties to the south. Pushing of the building bulk towards the north does not result in additional privacy impacts, as the proposal uses privacy screens and highlight windows to mitigate direct looking between the dwelling to the north.

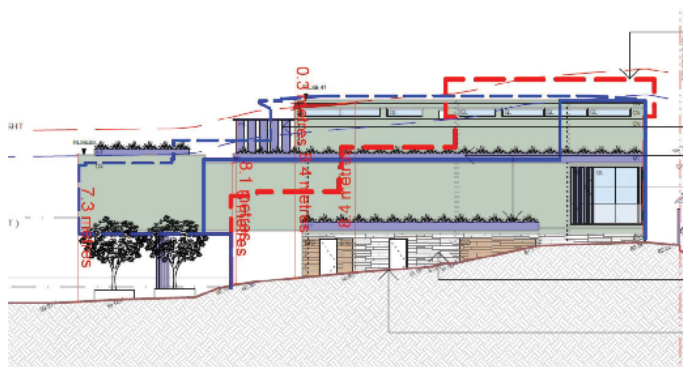
In regards to views, the non-compliant wall height as a result of the proposed first floor is not of direct consequence for the view impacts upon the property to the north. This is because the views obtained from the adjoining northern property are not obtained over the top of the building, but rather a view corridor across the building itself. Furthermore, the maximum height of this section of northern wall is comparable to the LEC Approved plans. See a detailed discussion regarding views later within this assessment report.

Therefore, given the proposed development has wall heights that are comparable to the LEC approved plans and this top floor building bulk has been pulled away from the southern boundary (improving overshadowing), the non-compliant wall height is not a reason for recommending refusal of the application.

B3 Side Boundary Envelope

Description of non-compliance

The proposed development has a non-compliance with the building envelope on the northern side of up to 300mm. The proposal also has a non-compliance with the building envelope on the southern side of up to 1.4m. The two figures below show the extent of non-compliance. It is noted that a portion of the southern building envelope non-compliance is an existing situation for the dwelling on the site, with alterations proposed to this section of wall.



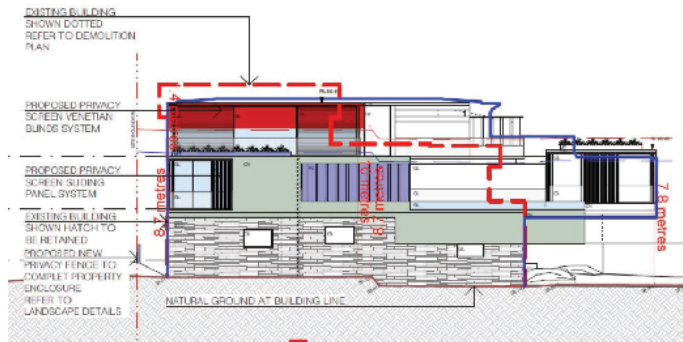


Figure 1 - Extent of envelope non-compliance shown in red. Northern elevation left, southern elevation right.

In considering this particular proposal, it is also relevant to consider the extent of non-compliance to the building envelope approved by the Land and Environment Court (LEC). An extract showing the extent of southern envelope non-compliance of the LEC Approval is shown below. As seen in the below figure, the proposed development reduces the extent of non-compliance for the southern building envelope when compared to the LEC approval.

Based on this comparison, Council does not have a concern with the extent of envelope encroachment for the proposed southern envelope and therefore the envelope encroachment is not a reason for refusal.

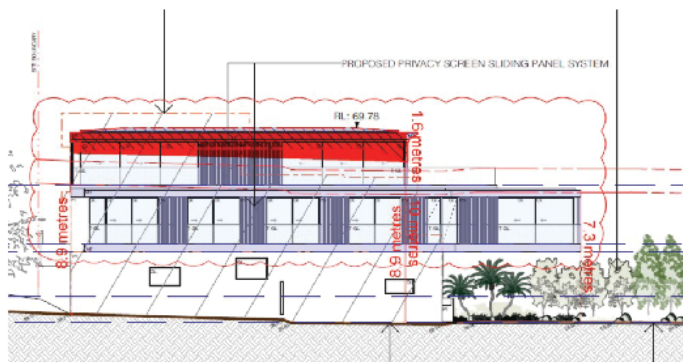


Figure 2 - Approved LEC southern elevation showing the extent of building envelope encroachment.

In consideration of the proposed envelope encroachment of the northern wall (300mm), this encroachment is considered against the below objectives.

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 300mm section of encroachment to the top floor is not considered to render the top floor to have excessive building bulk. See discussion elsewhere within this report regarding the remainder of the development building bulk.

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

Comment

The encroachment is on the northern side and therefore has no direct impact of solar access. Highlight windows are used for this section of the building which resolve any privacy between buildings.

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

Comment

The top floor of the northern elevation has been sufficiently stepped to respond to topography.

Having regard to the above assessment, it is concluded that the encroachment to the northern envelope is consistent with the relevant objectives of WDCP.

Accordingly, this assessment finds that the area of encroachment does not form a reason to recommend refusal of the application.

B9 Rear Boundary Setbacks

The existing dwelling has a setback of 1.74m to the ground floor and first floor.

The proposed alterations and additions maintain the 1.74m rear setback. Although this is non-compliant with the current controls under the WDCP, the proposed development does not seek to introduce any further encroachment into the rear setback and makes alterations to the existing building at the current setback.

Therefore, the proposed rear setback is satisfactory due to being an existing situation that is not made worse via the alterations and additions.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The DCP requires that 40% of the site consist of soft landscaping. The minimum dimension to be counted as soft landscaping is 2m wide and soil depth of 1m. The proposed development consists of 20.3% soft landscaping in accordance with the control. When including all areas of landscape planting (including those less than 2m), the proposal consists of 29.1% landscaping.

Although the proposal represents a significant shortfall of landscape planting, it is relevant to recognise the percentage of landscaping for the site approved by the LEC. This scheme included slightly less landscape open space, being 19.5% (and 29.6% when including all areas within the site).

Therefore, this assessment recognises the existing approved shortfall of landscaping and takes this into account in the assessment of the application.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

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

Comment

The site is a battleaxe lot which does not have a street presentation.

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

Comment

The proposal is capable of providing new canopy trees and Council's landscape officer supports the proposal following review of the submitted landscape plan.

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

Comment

The development does not further reduce the amount of landscaping compared to the recent court approval. Council's landscape officer is satisfied with the submitted landscape plan that provides a range of low, medium and tall canopy trees.

- ***To enhance privacy between buildings.***

Comment

Landscaping is provided along the southern boundary to assist in maintaining privacy between buildings.

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

Comment

The development provides a suitable amount of private open space for the needs of the occupants.

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

Comment

Sufficient space is proposed for clothes drying and outdoor uses associated with the dwelling.

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

Comment

Should consent be granted, standard conditions would apply to the development with regards to stormwater in accordance with Council's Policy.

Having regard to the comparison of landscaping approved as part of the LEC approval, the application is satisfactory when assessed against the control with regards to landscaping.

D6 Access to Sunlight

The assessment of solar access is considered for the following adjacent properties (both of which are located to the south of the development):

98 Headland Road

The applicant has provided shadow diagrams for the northern elevation of No. 98 Headland Road. It is noted that the northern elevation includes utility room (bathroom and laundry) windows which do not require a minimum of 3 hours solar access. Therefore, the proposal results in no unreasonable overshadowing impacts to the northern elevation of No. 98 Headland Road.

The rear setback area of No. 98 Headland Road is already overshadowed by the existing building on No. 55 Wheeler Parade. Furthermore, it is noted that the principle private open space for this building is located on the southern side (which includes a swimming pool).

94 Headland Road

Detailed shadow diagrams have been provided with the application demonstrating that the area of private open space within the rear yard of No. 94 Headland Road will continue to receive 3 hours of solar access to 50% of the Private Open Space, in accordance with the DCP.

Summary

It is acknowledged that the proposed development provides an improved solar access outcome for the adjoining properties when compared to the LEC approved plans. This is due to the upper floor bulk being pushed towards the northern side of the site.

Based on the above assessment and shadow diagrams provided with the application, the proposed development provides a satisfactory outcome with regards to overshadowing in accordance with Council's DCP and consistent with the LEC approval.

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 views to be impacted include views of Curl Curl Beach (including land-water interface and the wave action zone), the northern headland of Freshwater Beach, North head, Manly district views and views to the Sydney CBD.

The extent of impact differs between each room which is described in detail below.

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 views to be obtained are over the side boundary of No. 51A Wheeler Parade which, like No. 55 Wheeler Parade, is a battleaxe lot with primary views of Curl Curl Beach looking south over the side boundary. The planning principle references that views over a side boundary are more 'difficult to protect', however, the planning principle does not state that views over a side boundary should not be protected or are irrelevant.

The question of 'difficultly' and 'skillful design' is addressed in Principle 4 below regarding the building design.

There are three (3) areas within the property at No. 51A which will be impacted via the proposal, the extent of impact is addressed in detail below under Principle 3. The areas of No. 51A which are impacted are:

- Bedroom 5, which is located on the ground level and is also referenced as a 'home office' on the floor plans. Bedroom 5 is set up by the occupant as a permanent home office. It is noted that the planning principle does not distinguish between the use of a room as a home office/study and bedroom and therefore, the Planning Principle would consider the use of this room a bedroom. It is worthy to mention however, that this room is a highly used room by the resident being set up as permanent home office.
- Bedroom 2 which is located on the first floor and is impacted by the proposal.
- Master Bedroom Balcony view looking south which adjoins the 'Master Bedroom'.

It is acknowledged that the LEC Planning Principle for view sharing places more weight on living rooms and kitchens when assessing a view impact. The LEC planning principle does not, however, dismiss view sharing from bedroom and particularly when the bedrooms provide the principle prominent coastal views looking south from the property. The views obtained from the above bedrooms (in particular bedroom 2 and 5) are considered whole, prominent, coastal and district views which enhance the amenity of the dwelling and are considered worthy of retention in some form.

The view impact from each room is from sitting and standing positions. The extent of which is addressed in Principle 3 below.

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

In order to establish the extent of the impact, each room within the house which has a view is considered below. This also includes those rooms which are not impacted by the proposal. Attachment 1 to this assessment report contains the relevant view impact photographs which correspond to each area below.

The applicant was required to install height poles to demonstrate the north-eastern corner of both the proposed master bedroom and the position of the master bedroom approved by the Land and Environment Court under DA2019/1175. It is important to note that the LEC approval under DA2019/1175 had the effect of impacting a portion of views looking south, with the height poles allowing a comparison with the current proposal. Given this approval by the LEC is still valid, this approval is taken into consideration in assessing the view impact of the proposal (including the additional portion of views the proposal would impact).

Bedroom 5

Bedroom 5 is currently set up as a home office with a desk facing towards the southern and eastern window. As shown in **Figure 1 of Attachment 1**, from a standing position centrally within the room, the LEC approval (right pole) maintained a view corridor of land-water interface and the wave action zone of Curl Curl Beach. Under the proposed development (left pole), all of Curl Curl Beach is lost with only a very minor portion of ocean horizon remaining.

When sitting at the most eastern extent of the room (**Figure 2 of attachment 1**), the majority of the view to Curl Curl Beach is impacted by the proposal (as demonstrated by the visible pole). The LEC approval retained a small corridor looking south-east at Curl Curl Beach. However, the proposal results in all but the smallest section of beach retained, which is a more substantial impact when compared to the LEC approval.

It is also worth mentioning that Bedroom 5 has a north facing window. **Figure 3 of Attachment 1** shows the view out of this northern window and this window of Bedroom 5 does not contain any view of significance.

Based on the extent of the impact, which includes the proposed development removing the vast majority of views towards Curl Curl Beach, Freshwater Headland, North Head and Manly District views, **the view impact from Bedroom 5 is considered to be Devastating.**

Bedroom 2

Bedroom 2 has a similar aspect to Bedroom 5 however it is located on the floor above and further west. From a standing position and based on the height poles, the proposal will result in the removal of the vast majority of coastal views looking south and south-east. It is not considered beach views will be available over the top of the master bedroom due to the extent of building projecting towards the southern boundary.

The LEC approval retained a small corridor of beach (as shown in **Figures 4 and 5 of Attachment 1**) looking out the southern and eastern window. However, the proposed master bedroom design results in further impact and complete removal of the view of Curl Curl Beach. It must also be considered the extent of impact the proposed top floor addition will cause to Bedroom 2, with the proposed first floor addition generally aligning with the pool area (**Figure 6 of Attachment 1**). No height pole was erected, however Figure 6 shows the extent of views to be impacted looking due south which contain district views of Manly and the southern end of Curl Curl Beach. When viewing Figure 4, the views towards North Head will be impacted by the

proposed first floor, with the remaining views impacted by the master bedroom. The design of the proposed top floor also has an increased impact when comparing the LEC approval due to the shifting of the building bulk towards the northern boundary.

Figure 7 of Attachment 1 shows the views from this room looking towards the north-east. A view of Long Reef Headland, Long Reef Beach and ocean horizon is retained from this window.

Although there is a view retained looking north-east from this room of long-reef headland, due to the extent of the views to be impacted looking south and south-east **the impact from Bedroom 2 is severe.**

Master bedroom

The master bedroom has full height sliding door facing east and a window facing north. There is small balcony with tables and chairs adjoining the master bedroom. As seen in **Figure 8 of Attachment 1**, expansive views of the ocean horizon, Long Reef Headland, Long Reef Beach are obtained from the eastern facing window. Similar views are also obtained from the northern facing window of this room and the views looking north-east are retained. Looking south from the balcony, there is an impact from the proposed development as shown in **Figure 9 of Attachment 1**. An additional section of Curl Curl beach is impacted when compared to the LEC approval.

Based on the views impacted and views retained, **the impact from the Master Bedroom is Minor.**

Ground Floor Living Room

There is a ground floor living room with full height sliding doors and a balcony facing east. As seen in **Figure 10 of Attachment 1**, some views are obtained of long reef headland and portions of the surrounding ocean and these will be retained. These views are considered to be partial views which are obscured by the surrounding development, as opposed to the 'whole views' which are unobstructed looking south.

Living Room, dining room, bedroom 3 and 4

The living room, dining room, bedroom 3 and 4 have an looking west towards Wingala Reserve, however, no coastal views are available from these rooms. The views towards Wingala Reserve are not considered of high importance or add substantially to the total amount of views currently enjoyed from the property.

Overall Impact

The dwelling at No. 51A Wheeler Parade will retain some coastal views looking towards the north-east from two rooms within the building. However, from Bedrooms 2 and 5 the view impact looking south-east is considered both severe and devastating from the respective rooms given the significant proportion of the views which are impacted. The aspect looking south and south-east are considered whole, prominent coastal views which are certainly worthy of consideration and at least partial protection.

The proposal to remove the vast majority of these views is considered **overall to be a severe view impact.**

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a

result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4

The proposed master bedroom of the development is compliant with the DCP controls for wall height, building height, setback and envelope. Therefore, the question to be answered is whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact upon views of neighbours.

In this circumstance, there is considered to be a design solution that could retain at least a portion of the southern coastal views for the neighbouring property, whilst retaining the key design features and amenity for the proposed development, which include the master bedroom design. The proposal includes an 8.7m long internal landscape courtyard and adjoining corridor of equal length leading to the master bedroom. Redesign of this area could easily accommodate a master bedroom of similar floor area and result in an equal view impact to that of the LEC approval resulting from the master bedroom design.

In reference to Principle 2, the planning principle states that views across a side boundary are more *difficult* to protect. In terms of design, a proposal with equal impact to the LEC approval is not considered difficult to achieve and therefore, although the view impact is obtained across a side boundary from two bedrooms, the view impact is considered unreasonable given the severity of the impact and option for a more skillful design to retain the remaining view corridor following on from the LEC approval.

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

Comment

The proposal does not demonstrate innovative design to retain view corridors and maintain amenity for adjoining properties.

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

Comment

No canopy trees are proposed for removal.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

D8 Privacy

Detailed Assessment

Northern Elevation

The proposed northern elevation is not considered to give rise to any privacy or overlooking impacts to the northern neighbouring property. Raised sill height windows and a privacy screen to the upper floor balcony is used.

Eastern Elevation

There is considered sufficient spatial separation (10.19m) between the eastern boundary and the proposed master bedroom to mitigate any direct overlooking impacts.

Western Elevation

The western elevation overlooks Wingala reserve and does result in any privacy impact.

Southern Elevation

It is important to compare the proposal to the approved LEC plans when considering the proposals impact upon privacy or if there will be additional impacts resulting from the proposed development.

The ground floor pool deck is treated with privacy screening and the number of bedroom windows facing the southern boundary has been reduced when compared to the LEC approved plans. The master bedroom has increased the setback to the southern boundary to 6.5m (when compared to previous setback of 2.8m). It is noted the court approval required the following condition to treat the southern window of the master bedroom:

- ***Amendment to Architectural Plans***

A fixed external perforated metal screen (corten screen) is to be affixed to the Master Bedroom windows on the southern elevation to a minimum height of 1m above finished floor level.

In the event consent is to be granted, it is recommended that privacy treatment to the master bedroom is provided in line with the above, of a material that compliments the building façade and finishes, to mitigate direct overlooking into the rear yard of the southern properties.

The proposed first floor southern elevation (living and dining rooms) has reduced the extent of windows facing the southern boundary, when compared to the LEC approved plans. A sliding privacy screen has been retained to the southern dining room and living room window to mitigate privacy, with the surface area of glazing without privacy screening is less than what was approved by the LEC. Translucent glazing to a height of 1m above the first floor level along the southern elevation living room windows, were approved and shown upon the LEC plans. The proposed plans do not show this as translucent glazing and in the event consent is granted, it is recommended a condition be applied to include translucent glazing to 1m above the finished floor level of the southern elevation of the dining and living room window, to result in a consistency with the LEC approved plans.

Overall Comment

Overall, the proposed development is considered to have an improved outcome with regards to visual privacy when compared to the LEC approved plans. Should consent be granted, conditions in accordance with the above should be applied to result in a satisfactory privacy outcome.

D9 Building Bulk

DCP Control

The DCP contains a number of clauses within D9 to address building bulk and scale, one of which being as follows:

2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.

The building is relatively well articulated with the exception of the northern ground floor wall extension, the portion of which that forms part of the master bedroom and corridor leading to the master bedroom.

This part of the proposal results a 15.4m length of blank, unarticulated wall that results in unreasonable visual impacts as viewed from the northern adjoining property. The length of projecting wall is considered excessive and also results in direct additional view impacts from the adjoining property (see discussion upon views elsewhere in this report).

Merit consideration

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

- ***To encourage good design and innovative architecture to improve the urban environment.***

Comment

The excessive wall length is not considered to be of good design, with little articulation and the additional building bulk causing a direct impact upon views.

The proposal is not considered to result in an '*improvement to the urban environment*' with the additional wall length sitting closer to the northern property boundary than the LEC approval, resulting in unreasonable visual impacts and excessive building bulk as viewed from the adjoining property.

Furthermore, the previous outlook for the adjoining property was expansive, coastal, district and city views. The proposal would result in the adjoining property looking at a blank wall, which is not an improvement to the urban environment as experienced from the adjoining property.

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

Comment

As above, the proposal is not considered to have minimised the visual impact by moving the master bedroom extension closer to the northern boundary which increases the visual bulk and scale of the proposal, creating an unreasonable visual impact for the adjoining northern property.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not 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 \$22,022 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,202,225.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Inconsistent 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.

Summarised Conclusion

The application, when compared to the existing LEC approval, retains a reasonable level of privacy and solar access for the adjoining properties and the proposal is generally consistent extent of building height encroachment, envelope encroachment and landscape open space outcome in comparison.

However, the proposed design results in further view impacts for the adjoining property to the north that are considered to be severe and unreasonable given that there is sufficient opportunity for a more

skilful design to retain key view corridors for the adjoining properties. The extent of the northern wall leading to the master bedroom presents as excessive building bulk and creates a visual impact for the adjoining property.

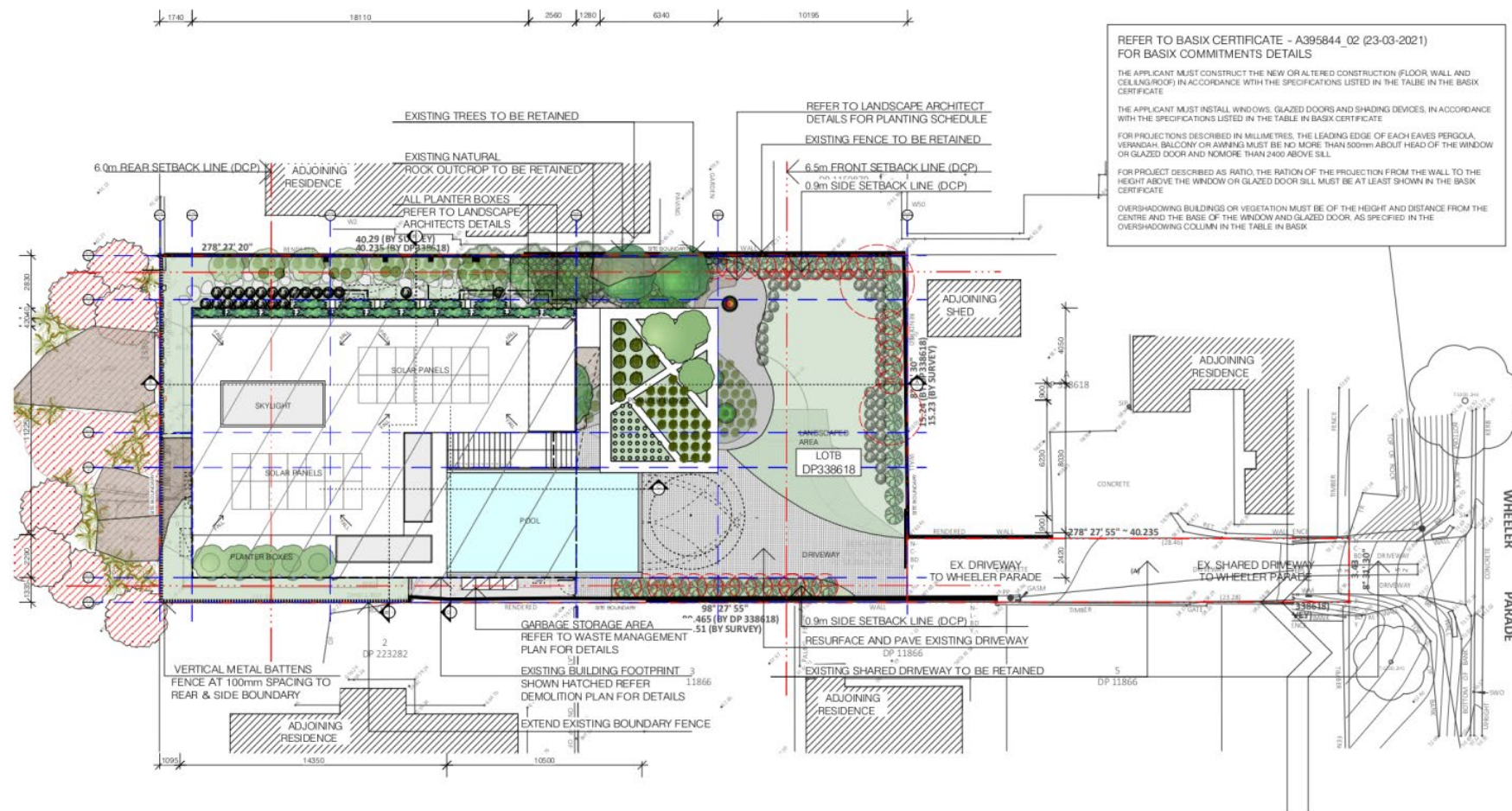
Therefore, the application is recommended for refusal to the DDP for the above reasons.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/0517 for the Alterations and additions to a dwelling house including a swimming pool on land at Lot B DP 338618,55 Wheeler Parade, DEE WHY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.



SITE/ROOF PLAN

ALTERATIONS & ADDITIONS - 55 WHEELER PARADE, DEE WHY

CONTRACTOR MUST VERIFY ALL DIMENSIONS ON SITE, PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION WORK, OR SHOP DRAWINGS. ONLY TYPED DIMENSIONS TO BE USED AND TAKE PRECEDENCE OVER SCALING. ANY VARIATIONS IN DIMENSIONS DUE TO EXISTING STRUCTURE SHALL BE BROUGHT TO THE ATTENTION OF THE DESIGNER OR ARCHITECT PRIOR TO PROCEEDING WITH ANY FURTHER WORK. ALL SCALED DIMENSIONS TO BE VERIFIED.

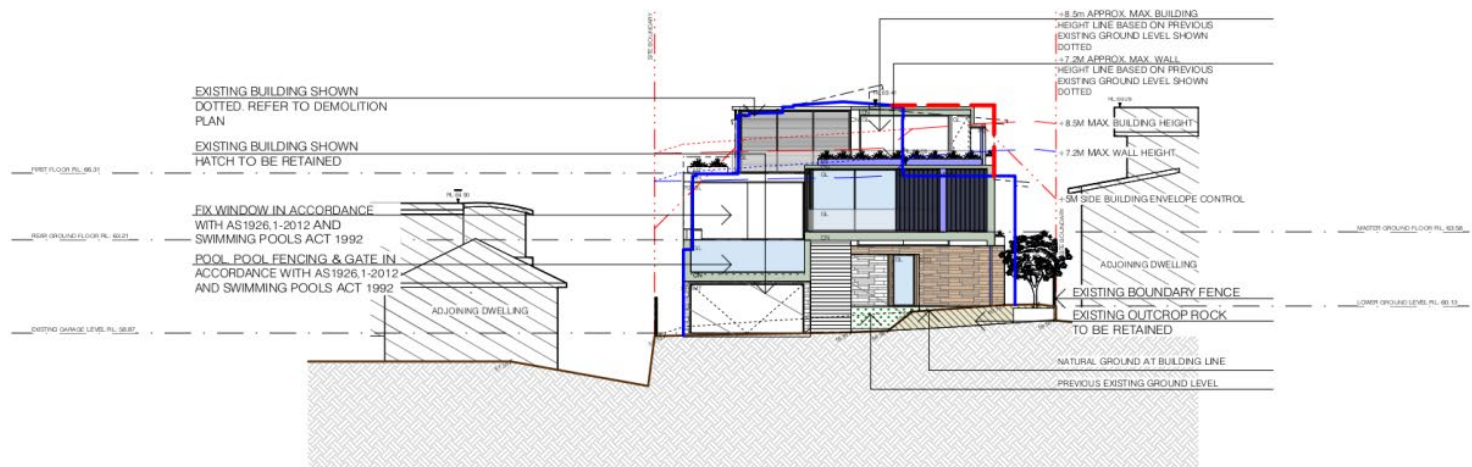
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LEGEND	
MATERIAL	MATERIAL
BRK - BRICK	PT - PAINT
CN - CONCRETE	PS - PRIVACY SCREEN
CPT - CARPET	ST - STEEL
CR - CEMENT RENDER	TM - TIMBER
CT - TILES	STO - STONE
FC - FIBRE CEMENT SHEET	
GL - GLASS	
LV - LOUVRES	
MC - METAL CLADDING	
MT - METAL ROOF	

MATERIAL
PT - PAINT
PS - PRIVACY SCREEN
ST - STEEL
TIM - TIMBER
STO - STONE

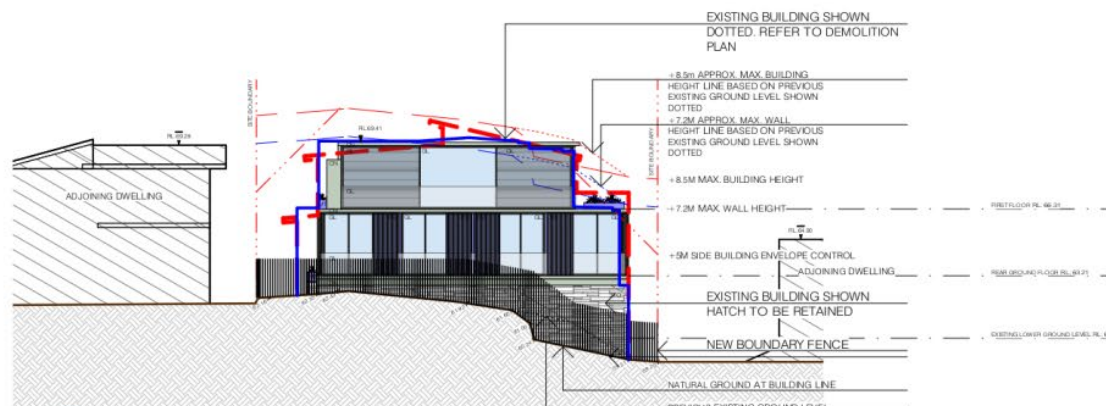
LEGEND:

	TIMBER	EXISTING	DEMOLISH	EXISTING BUILDING
	GLASS	BRICK	CONCRETE	METAL, S/S
		STONE	PAINT	PROPOSED BUILDING
JOB TITLE ALTERATIONS & ADDITIONS SITE ID 55 WHEELER PARADE, DEE WHY LOT B DP 338618 DATE JANUARY 2019 SCALE 1:200				
26.03.2021 XX.XX.2021 17.12.2020 16.10.2020 28.08.2020 30.06.2020 23.06.2020	PRELIMINARY  Member Australian Institute of Architects 			
Justin Lee Architects ABN 61 113 474 249 1 Pinner Rd, Gladesville, NSW e info@studiojla.com.au, tel (02) 9617 2690 Justin Lee - Noun, Architect 1670				DWG No 0328/DA 01



FRONT ELEVATION

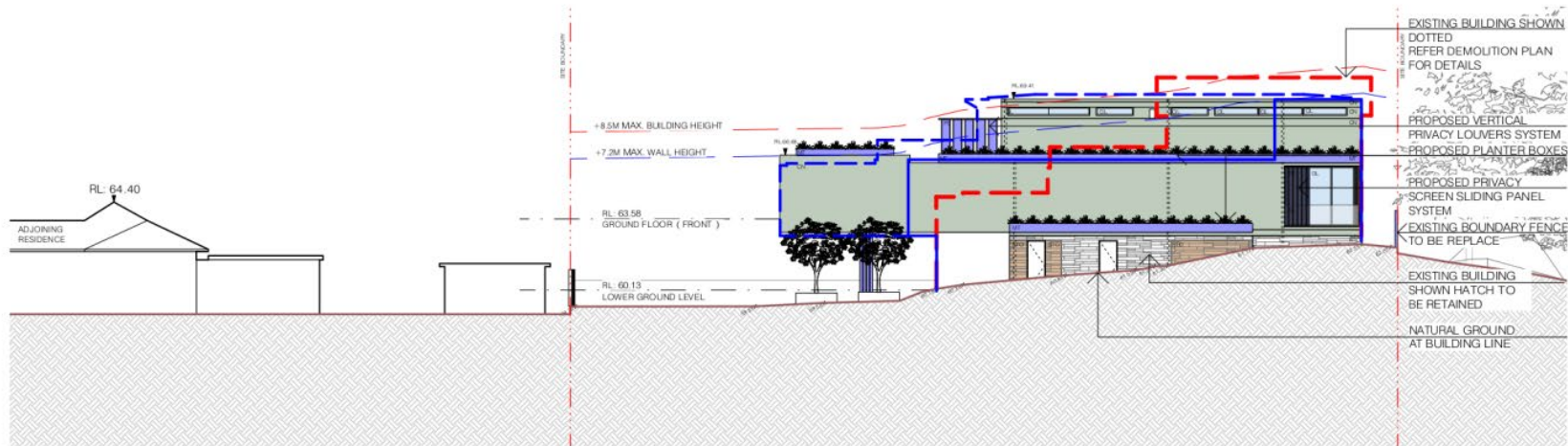
ALTERATIONS & ADDITIONS - 55 WHEELER PARADE, DEE WHY



REAR ELEVATION

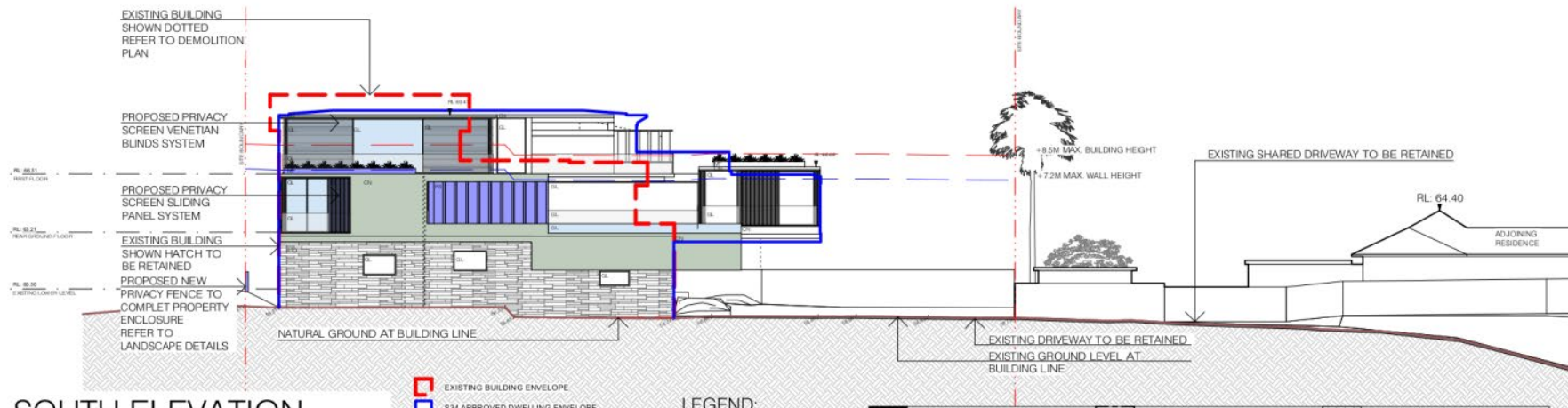
ALTERATIONS & ADDITIONS - 55 WHEELER PARADE, DEE WHY

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NORTH ELEVATION

ALTERATIONS & ADDITIONS - 55 WHEELER PARADE, DEE WHY



SOUTH ELEVATION

ALTERATIONS & ADDITIONS - 55 WHEELER PARADE, DEE WHY

LEGEND:		EXISTING BUILDING	
TIMBER	GLASS	EXISTING	DEMOLISH
BRICK	STONE	BRICK	CONCRETE
PAINT		STONE	PAINT
EXISTING BUILDING		METAL S/S	PROPOSED BUILDING

CONTRACTORS MUST VERIFY ALL DIMENSIONS ON SITE. PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION WORK OR SHOP DRAWINGS ONLY REQUIRED DIMENSIONS TO BE USED AND THEN PROPERTY OWNERS/ARCHITECTS SHALL BE BROUGHT TO THE ATTENTION OF THE DESIGNER OR ARCHITECT PRIOR TO PROCEEDING WITH ANY FURTHER WORK. ALL SCALE DIMENSIONS TO BE VERIFIED. THIS DRAWING IS THE COPYRIGHT AND THE PROPERTY OF STUDIOJLA. ALL RIGHTS FOR ARCHITECTS AND DESIGNERS NOT BE RETAINED OR USED OR COPIED WITHOUT THE PRIOR WRITTEN CONSENT OF STUDIOJLA - ARCHITECTS.	LEGEND: MATERIAL BRK - BRICK CN - CONCRETE CPT - CARPET CR - CEMENT RENDER CT - TILES FC - FIBRE CEMENT SHEET GL - GLASS LV - LOUVRES MC - METAL CLADDING MT - METAL ROOF	MATERIAL PT - PAINT PS - PRIVACY SCREEN ST - STEEL TIM - TIMBER STO - STONE	G DA SUBMISSION SET F PRELIMINARY DA SUBMISSION SET E PRELIMINARY DA SUBMISSION SET D PRELIMINARY DA SUBMISSION SET C PRELIMINARY SCHEMATIC DESIGN - G2 B REVISED SCHEMATIC DESIGN - OPTION B A PRELIMINARY DA DESIGN	26.03.2021 XX.XX.2021 17.12.2020 15.10.2020 28.08.2020 30.06.2020 23.06.2020	JOB TITLE ALTERATIONS & ADDITIONS SITE ID 55 WHEELER PARADE, DEE WHY LOT B DP 338618 DATE JANUARY 2019 SCALE 1:200	PRELIMINARY Member Australian Institute of Architects	studioJLA architecture & interiors Justin Lee Architects ABN 81 113 474 249 1 Pittwater Rd, Gladesville, NSW e info@studiojla.com.au tel (02) 9817 2000 Justin Lee - Nam, Architect 1970	DWG No 0328/DA 06 /G
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INGHAM PLANNING PTY LTD

1

REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS

CLAUSE 4.3 MAXIMUM BUILDING HEIGHT PURSUANT TO CLAUSE 4.6 OF
WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011ALTERATIONS & ADDITIONS TO A DWELLING INCLUDING NEW GROUND & FIRST
FLOOR LEVELS AT No. 55 WHEELER PARADE, DEE WHY**1. Introduction**

Clause 4.6 of Warringah Local Environmental Plan 2011 (WLEP 2011) allows for flexibility in the application of certain development standards to achieve *"better outcomes for and from development by allowing flexibility in particular circumstances."*

The original natural ground level of the site at 55 Wheeler Parade has been the subject of substantial excavation on the southern side to create the existing lower ground floor, including a garage and driveway. Along the southern elevation, excavation of up to 2m has occurred. There are substantial level differences between the northern rear portion of the site and the southern side of the site.

In the rear northwest corner the site has an RL of 62.2. This falls more than 3m to RL 59 at the driveway entry to the garage in the lower ground floor. The existing split level lower ground floor has a floor level of 59.09 at the entrance and RL 60.30 for the rest of the lower ground floor, which is as much as 2m below the original ground level of the site.

Building height must be measured from existing ground level, which for that portion of the building that extends above the 8.5m maximum most of the site, is the level of the excavated level of the existing lower ground floor (RL 60.3)

Due to the excavated nature of the site, the relatively steep slope down from the northwest corner, and substantial level differences, a variation to the 8.5m height control prescribed in Clause 4.3 of WLEP, is necessary in order to enable the development to proceed.

2. The relevant development standard

Clause 4.3 of WLEP 2011 sets out requirements in relation to height of buildings. Sub-clause 4.3(2) requires that a building on any land is not to exceed the maximum height shown for land on the Height of Buildings Map. The maximum building height for the subject land, as shown on this Map is 8.5m. Building height is measured as height above existing ground level, to the highest point of the building.

3. Requested variation to the standard

The proponent seeks an increase in building height of up to 1.2m above the 8.5m maximum building height standard that applies to the site, pursuant to clause 4.3 to allow portions of the building to have a maximum building height of up to 9.7m above existing ground level.

The height encroachment occurs in the rear southern portion of the building comprising the eastern half of the Level 1 Living Room, where this room is located above the existing excavated lower ground floor level. This represents a relatively modest proportion of the overall building area.

The existing dwelling also encroaches on the 8.5m maximum building height control, where a portion of the first-floor level extends up to 1000mm above the 8.5 maximum building height control.

The development application plans include elevation and section drawings (Plans 0328 DA05G, DA06G, DA07G and DA08G illustrating extent of height encroachments at the various sections of the building, including the western, eastern and southern elevations. The previously existing ground level, before the existing dwelling was constructed is also shown. 3D height plane drawings have also been prepared showing the 8.5m height plane for the existing dwelling and the proposed dwelling after alterations and additions, both measured to existing ground level and the previous ground level, prior to excavation for the existing dwelling.

Figure 1A and **1A** below, show the 8.5m building height plane, as measured from the existing ground level of the site. **Figure 1A** shows in white, the extent of the existing dwelling that extends above this height plane. **Figure 1B**, shows in white the extent of the new dwelling, after alterations and additions, that extends above the 8.5m building height plane.

Figure 1A – 8.5m Height Plane Measured from Existing Ground Level (Existing Dwelling)

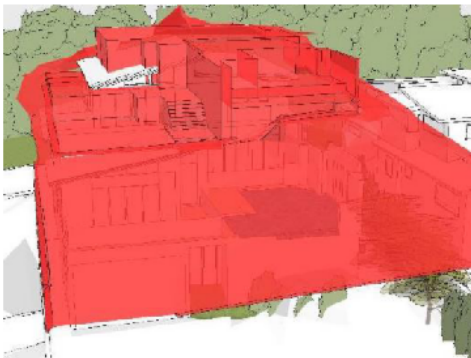


Figure 1B – 8.5m Height Plane Measured from Existing Ground Level (Dwelling After Alterations/Additions)

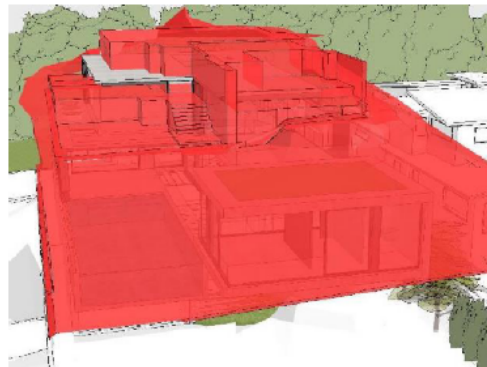


Figure 2A and **2B** on the following page, show the 8.5m building height plane, as measured from the previously existing ground level of the site, prior to excavation for the existing dwelling. **Figure 2A** shows in white, the reduced extent of the existing dwelling that extends above this height plane, measured on this basis. **Figure 2B**, shows in white the reduced extent of the new dwelling, after alterations and additions, that extends above the 8.5m building height plane measured on this basis.

Figure 2A – 8.5m Height Plane Measured from Previous Existing Ground Level (Existing Dwelling)

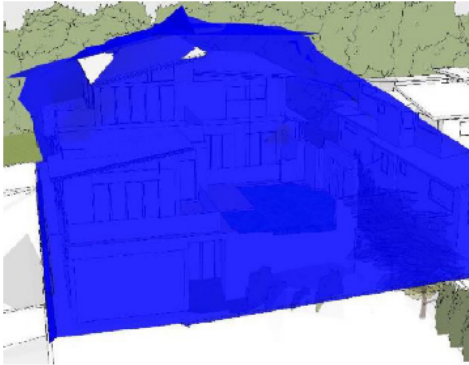
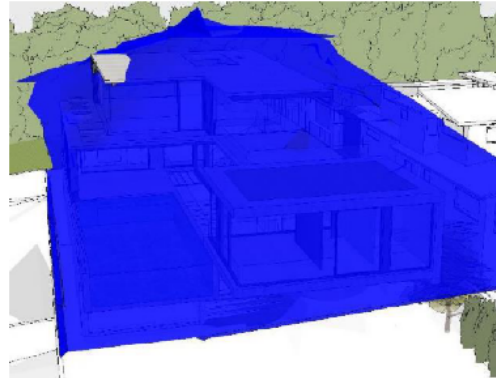


Figure 2B – 8.5m Height Plane Measured from Previous Existing Ground Level (Dwelling After Alterations/Additions)



The height encroachments are not readily visible from Wheeler Parade and are also not easily seen from Headland Road or any other locations within the public domain. Only an encroachment of up to 600mm in the southwest corner of the building is seen from Wingala Reserve at the rear of the site. The height encroachments have no impact on streetscape or the character of the locality.

The height encroachments do not materially impact on neighbour amenity. As demonstrated in the shadow diagrams, the height encroachments result in no increase in shadows to solar access sensitive areas of neighbouring properties. Views and outlook available from neighbouring properties are away from the development site, towards the Pacific Ocean, to the northeast, east and southeast.

As noted above, the height encroachments primarily arise from the lowering of the ground level along the southern side of the site to accommodate the existing lower ground floor level. The issue of assessing building height encroachments and associated impacts on sites where the existing ground level is an excavated basement have been addressed by the Land and Environment Court in proceedings *2015 – NSWLEC 1189 Stamford Property Services Pty Ltd v City of Sydney*. This judgement noted that the requirement to measure building height from existing ground level poses particular challenges where existing buildings occupy almost the entire site and the site has previously been excavated to accommodate a basement level.

In such circumstances the Court considered it appropriate to apply a ground plane across the site drawn from ground lines at the boundaries of the site. This ensures a practical application of the height standard. There are potentially 2 methodologies for calculating the applicable ground plane, using either a surveyed ground plane, or an extrapolated ground plane.

Figure 2A and **Figure 2B**, on Page 3 illustrates the extent of the proposed building that extends above the extrapolated ground height plane, as it existed before excavation for the existing dwelling. Using this methodology only a limited portion of the top floor level, being primarily the roof element, extends above the 8.5m height plane.

4. Requirements of clause 4.6 – Exceptions to development standards

The objectives of clause 4.6 are as follows:

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

Clause 4.6(3) requires that a request to contravene the control, 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 considering whether to grant consent for a development that contravenes a development standard, a consent authority must be satisfied that:

- “(i) the applicant’s 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 to be carried out, and*
- (iii) the concurrence of the Secretary has been obtained.*

These matters are addressed below in Sections 5 and 6.

5. Compliance with the development standard is unreasonable or unnecessary

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons.

The proposal achieves the objectives of the height control.

The objectives of the control are noted and commented upon below:

The objectives for the height control are as follows:

- (a) To ensure 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.*

The proposal achieves the above objectives as detailed in the following assessment.

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

The proposed building, after completion of alterations and additions will remain of a similar bulk, scale and height as the existing dwelling. Building bulk and scale, as measured by assessable gross floor area (GFA), above lower ground floor level is increased by only 8m² (2.72%) from 294m² to 302m². The proposed extension of the building footprint (the master bedroom suite) is located on the higher northern side of the site and is fully compliant with height, setback and building envelope controls.

The RL of the proposed roof to Level 1 is similar to the RL of the roof of the neighbouring dwelling to the north at 51A Wheeler Parade. The height and scale of the building is compatible with existing development to the north, east and northeast.

Due to the significant drop in land levels on properties to the south, there is a building height difference equating to almost 2 storeys. However, the height relationship to the properties to the south is not materially different from the height relationship of the existing dwelling on the development site to these properties.

The westerly extension of Level 1 will increase the height and scale of the building as viewed from the neighbouring properties to the south. However, the combination of a generous 3.7m building setback to the southern side boundary and the built form backdrop of the existing elevated dwelling at No. 51A Wheeler Parade ensures that height and scale of the extended Level 1 will be compatible with the existing built form, as viewed from the south.

Land to the west comprises a public reserve. The height and scale of the western elevation is substantially the same as the western elevation of the existing dwelling. Due to the reconfigured roof, there is a marginal lowering of the building at the western elevation.

The proposed development is considered compatible with the height and scale of the existing development on the site and with surrounding and nearby development.

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

As demonstrated in the SEE, the proposed alterations and additions will result in minimal change to the existing visual outlook from neighbouring properties to the south and the public domain. The proposed additions, where they extend above the 8.5m maximum building height do not materially increase disruption of views, privacy or solar access to neighbouring properties.

Visual impact on the public reserve to the west will not be increased. The height encroachment does not impact on views or outlook from properties to the north or east. Any view or visual impact to these properties is limited to the proposed easterly extension of Level 1. However, the easterly extension comprising the master bedroom suite has fully compliant height and setbacks and does not encroach into the side building envelope.

There is no reduction of views from the public domain. Views from dwellings located on residential properties around the site have their primary views from living rooms and adjoining private open space orientated away from the subject land and will remain unaffected.

The 2 storey dwelling immediately to the north of the subject land at 51A Wheeler Parade, has district and ocean views to the east, north and northeast from living rooms and adjoining private open space. This dwelling also has southeast views across the development site from the windows of 2 ancillary rooms (a bedroom and a study), which will be partially obstructed. However, there will be no impact on views from primary rooms and adjoining terraces, as these views are to the north, east and northeast.

With respect to view impacts on No. 51A Wheeler Parade, reasonable view sharing is achieved on the basis that the views obstructed are across a side boundary within the primary building area of the site, are to secondary rooms and existing expansive district and ocean views from primary rooms/terraces to the north and northeast are unaffected. As noted above, any view impacts on the property to the north are impacted by the easterly addition, which is fully compliant in terms of height, setbacks and building envelope. The portion of the building, where it extends above the 8.5m building height control, has no view impact and lowering the building to 8.5m in this location would not result in any enhancement of views.

As demonstrated in the SEE the proposal will have minimal impact on neighbour privacy compared to the existing dwelling. Reducing maximum building height to 8.5m would not in any way reduce privacy impacts. The proposed development results in a net improvement to neighbour privacy.

As demonstrated in the SEE, the proposal results in minimal increase in overshadowing of neighbouring properties to the south. The additional building height above 8.5m does not cast shadows over any solar access sensitive areas of neighbouring properties.

The proposed development, at the height proposed, has a minimal and satisfactory impact on visual outlook, views, privacy and solar access of neighbouring properties.

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

The proposed alterations and additions will have minimal impact on the scenic quality of the existing bush environment adjoining the western rear boundary of the development site.

The height and scale of the western elevation is substantially the same as the western elevation of the existing dwelling and there is no reduction in building setback to the western boundary.

Due to the reconfigured roof, there is in fact a marginal lowering of the building for the roof ridge at the rear, resulting in a minor reduction in visual impact, as viewed from the bushland reserve.

The subject land is located more than 600m from the coastal foreshore and as such will appear as a relatively minor element in the view corridors extending west from the coastline. As viewed from the coast, the proposed building, after the alterations and additions are completed, will appear substantially the same as the existing dwelling, given the significant viewing distance. The proposal will have no adverse impact on the scenic quality of Warringah's coastal environment.

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

The proposed development is substantially hidden from view from Wheeler Parade, due to level differences and the screening effect of existing dwellings to the north, east and southeast of the site. There is a narrow view corridor extending up the access driveway off Wheeler Parade. However, given the separation distance and narrowness of the view, only a very small portion of the additions will be visible.

Due to the dwellings to the south being located at a much lower land level, the uppermost portion of the dwelling will be visible from Headland Road, located almost 60m to the south. However, the first-floor addition will substantially be subsumed into the elevated built form backdrop provided by the existing dwelling to the north at No 51A Wheeler Parade.

There is only minor change proposed to the western portion of the built form, facing toward the bushland public reserve to the west. If anything, the western portion of the building will have a slightly reduced visual impact compared to the existing dwelling.

Those portions of the building extending above the 8.5m maximum building height control have no privacy, view or visual impact on existing dwellings in the locality. The shadow diagrams indicate that shadows cast by those portions of the building that extend above 11m in height, are substantially contained within the shadows cast by the height compliant portion of the building.

Given the excavated site context, the sloping nature of the site, the integration of the additions within the existing built form and the context of neighbouring topography and development, it is considered that the proposal meets objectives of the maximum building height control.

The proposal achieves the objectives of the R2 Low Density Residential Zone

The zone objectives of the R2 Low Density Residential Zone are noted and commented upon below:

The zone objectives for the B4 Mixed Use Zone are as follows:

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

The proposal achieves these objectives as detailed in the following assessment.

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

The proposed alterations and additions maintain the existing low-density residential environment of the site and locality. The existing dwelling encroaches above the 8.5m maximum building height control due to the slope of the land and site excavation along the southern side to accommodate the lower ground floor level. This situation is not substantially changed by the proposed alterations and additions. In these circumstances, the requested height variation does not conflict with the low-density residential character of the locality.

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

The proposal is for residential development. Accordingly, Objective (b) in relation to other land uses is not applicable.

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

The proposed development results in an increase in landscaped area, including planting of additional local occurring native species. The relationship of the existing dwelling to the bushland natural environment to the west is not changed, as a consequence of the proposed alterations and additions. The proposed building, after completion of alterations and additions will maintain substantially the same landscaped setting and harmony with the natural environment, as the existing dwelling.

The proposed development achieves the objectives of the R2 Low Density Residential Zone to substantially the same extent or greater, as the existing dwelling.

Compliance would result in a poorer planning outcome.

One of the objectives of Clause 4.6 is to allow better outcomes to be achieved. In this case, as discussed above, a better architectural, urban design and occupant amenity outcome is achieved by allowing a height breach, facilitating a more integrated design outcome and more appropriate floor to ceiling height clearances.

It is possible to extend the building further to the east on its northern side and locate more of Level 1 further to the north, clear of the excavated lower ground floor to achieve height compliance. While achieving a height compliant outcome, this option would reduce the amenity of the adjoining property to the north at 51A Wheeler Parade in terms of visual outlook and views and compromise the overall architecture of Level 1 of the proposed addition by unnecessarily increasing its length.

The proposed location of the living room, while numerically encroaching into the 8.5m maximum building height due to the excavated nature of the site, below the living room, offers a more equitable balance of amenity impacts between neighbouring properties to the south and the adjoining property to the north (51A Wheeler Parade). A better planning outcome is achieved by allowing the height encroachment for a limited portion of the first-floor level. Amending the design to achieve strict numerical compliance offers no benefits in terms of urban design, planning or amenity outcomes.

Lack of impact

As noted in the above discussion, despite the numerical height non-compliance, the limited portion of the building that extends above 8.5m has no impact on the environmental and visual qualities of the locality, or the streetscape and the amenity of surrounding properties will be maintained to substantially the same extent as a development that is of a numerically compliant height.

The extent of the non-compliance is not excessive when compared to the existing dwelling and when measured to extrapolated previous existing ground level. Height controls are applied with some flexibility on sloping and excavated sites the height and built form outcome is commensurate with what would be expected on a sloping site, where existing floor levels are retained, rather than a whole new building constructed.

6. There are sufficient environmental planning grounds to justify contravening the development standard

The numerical height non-compliance results in no increase in environmental impact compared to a complying height and offers the benefit of facilitating alterations and additions which provide for an integrated building form over the building, as a whole. The alternative of reconfiguring Level 1 to increase southern side setback and extend it further east would compromise the amenity and architecture of the building, for no material benefit.

The non-compliances primarily arise from the excavated nature of the southern portion of the site and the slope of the land. In such circumstances allowing some variation in the height control is justifiable, particularly where a better planning outcome is achieved.

The consent authority must also be satisfied that the proposal meets the objectives of the standard and the objectives of the subject zone. As discussed above the proposal meets the objectives of the height standard and as detailed in the SEE and in this clause 4.6 submission, also meets the objectives of the B4 Mixed Use zone.

In determining to support a variation to a development standard, the consent authority must be satisfied that 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 to be carried out. This clause 4.6 submission has demonstrated that the proposal is consistent with the objectives of the height standard and with the objectives of the R2 Zone.

It is in the public interest to support a variation to a development standard where it is consistent with the objectives of the development standard and the zone objectives, in circumstances where a development achieves a better planning outcome.

Requiring the design of the development to be amended to achieve numerical compliance with the maximum building height standard would require more of the first-floor level to be relocated alongside the northern boundary, where the land has not been excavated. Such an outcome would result in Level 1 of the building exhibiting greater apparent bulk, length and height. The proposed design avoids this outcome by presenting less apparent bulk, length and height in a built form that is better aligned with the objectives of the height standard and the zone objectives, compared to a numerically compliant design solution.

Also, in acting in the Secretary's concurrence role, 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.*

In relation to (a), the proposed breach is minor and is not of any State or regional significance. In relation to (b), there is no public benefit from maintaining the standard as there is no adverse impact on the public domain or neighbour amenity arising from the requested height encroachment, the proposal is generally consistent with other relevant planning controls and a better planning outcome is achieved. Building height standards should be applied with some degree of flexibility on excavated and sloping sites. Such an approach is in the interest of orderly and efficient development of land.

As noted above enforcement of the control would result in a poorer planning outcome, which is not in the public interest.

In relation to (c), there are no other matters that require consideration.

Conclusion

The proposed building form and height is generally consistent with the existing dwelling on the site and existing contemporary dwellings in the locality. The proposal achieves the objectives of the building height control and the objectives of the R2 Low Density Residential Zone, notwithstanding the numerical height non-compliance arising from the excavated ground level and slope of the land.

The development, in the form proposed, provides for an appropriate building typology and density, with no material environmental impacts and is consistent with the objects of the *Environmental Planning & Assessment Act*. Requiring compliance is unreasonable and unnecessary in this case, as it would not result in any material benefit and in relation to architecture, urban design or amenity. Every effort has been made to minimise the extent of height encroachment, including minimal roof pitch.

Importantly, requiring strict numerical compliance would create a less desirable planning outcome. The design can be amended by requiring the first-floor level, including the living room and first floor balcony closer to the higher northern side to achieve height compliance. However, relocating more floor space to the more elevated unexcavated portion of the site would exacerbate perceived bulk, scale and height, compared to the development, as proposed. The public interest is served by supporting the request variation not the maximum building height standard.

Some flexibility with respect to the application of the building height control on sloping excavated sites is appropriate. Flexible application of the building height control development standard allows an improved architectural outcome that is responsive to the characteristics of the site and contributes positively to the character of the locality, with no material impact on neighbour amenity or the environment. The requested modest variation to the 8.5m maximum building height standard is appropriate and worthy of support.

Nick Juradowitch Director
Ingham Planning Pty Ltd
March 2021

Attachment 1 – View impact photographs



Figure 1 – View from Bedroom 5 (home office) looking south-east, standing position. Left pole is proposed development, right pole is approved development.





Figure 4 – Standing, looking south-east out of the southern window of bedroom 2. Left pole is proposed development, right pole is LEC approval.



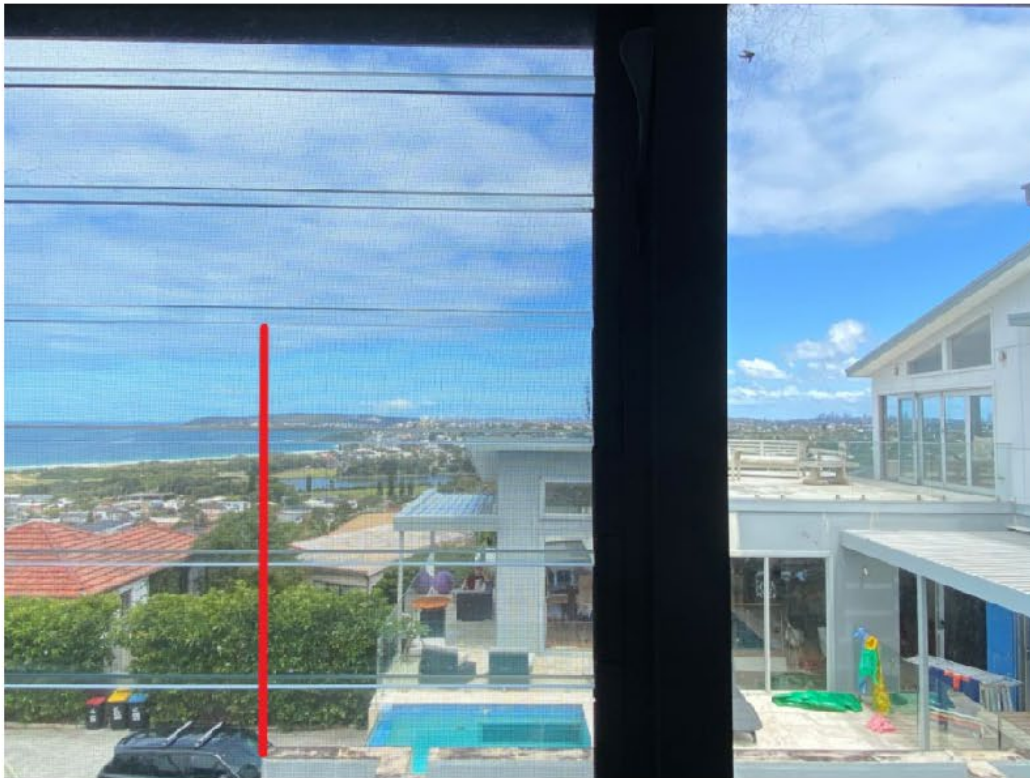


Figure 6 – Looking due south out of southern window bedroom 2. Alignment of proposed first floor relative to the existing pool.



Master Bedroom



Figure 8 – Standing view looking north-east from master bedroom.



Figure 9 – Standing view looking south from master bedroom balcony.

Ground Floor Lounge



Figure 10 – Standing looking north-east from ground floor living room.

ITEM 3.3	DA2021/1439 - 57 UNDERCLIFF ROAD, FRESHWATER - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING SWIMMING POOL
REPORTING MANAGER	Rebecca Englund
TRIM FILE REF	2021/798364
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations 3 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 DA2021/1439 for Alterations and additions to a dwelling house including swimming pool on land at Lot A DP 385601, 57 Undercliff Road, Freshwater, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1439
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot A DP 385601, 57 Undercliff Road FRESHWATER NSW 2096
Proposed Development:	Alterations and additions to a dwelling house including 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:	Katrina Marlow Dalton
Applicant:	John Denton

Application Lodged:	18/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/08/2021 to 10/09/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 40%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,899,402.00
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EXECUTIVE SUMMARY

The proposal is referred to the Development Determination Panel as the alterations and additions involve more than a 10% variation to the height of buildings development standard. The critical assessment issues for the proposal relate to view, building height, privacy, bulk, construction activity that may disrupt the shared driveway area. These issues have been addressed and conditions are recommended where appropriate. The applicant has sought to respond to the issues raised in submissions by providing a detailed view sharing analysis and also by virtue of the removal/deletion of the construction / landscaping works previously proposed within the front right of way easement area. In doing so, the scope of works has been reduced so the front setback area within the shared access easement will remain unchanged.

The non-compliances with the building height, front setback, side boundary envelope, wall height and landscaped open space are supported based on merit considerations. The main wall plane of the dwelling complies with the rear setback and other elements of wall, roof and balcony extensions are considered acceptable on merit. The building height of the proposal is supported pursuant to Clause 4.6 of WLEP 2011.

All internal referrals support the proposal subject to conditions and it is noted that the garage area is being reinstated (and extended) from a previous approval to convert it to habitable space. The existing site conditions and the established floor levels and wall alignment of the dwelling house mean that there is limited excavation required with the proposal. However, the natural ground level was deeply excavated for the existing house approval and therefore this influences the ability to maintain compliance with building height, wall height and side boundary envelope. The additions principally relate to extensive internal reconfiguration of floor layout, extending the dwelling wall forward, a loft style bedroom with new roof form, new pool / terrace at the rear and side wall changes. Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and an appropriate development response for the subject site.

PROPOSED DEVELOPMENT IN DETAIL

The application proposes part demolition and alterations and additions to a dwelling house.

Details of the proposed works are as follows (as per amended plans):

- **RL31.05 Garage Level-** Garage (2 cars), storage, lift access / entry area.
- **RL32.58 Lower Ground Rear** - Living room & wet bar, bedrooms (2) bathroom, storage, stair access.
- **RL35.10 Ground Floor Level** - Rumpus room, bedrooms (2), lift and stair access, storage, balcony.
- **RL37.80 First Floor Level** - Kitchen /pantry / living dining area, bathroom, lift and stair access, gas fire, balcony (2), pool /terrace area.
- **RL40.45 Loft Level** - Loft bedroom, bathroom, storage, terrace.
- **RL40.45 to RL43.0** - Roof level

Demolition and site preparation works, excavation, drainage & stormwater systems, landscaping, elevated swimming pool and lawn covered terrace, minor fencing and ancillary site works.

Note: The submitted development application originally included ancillary works within the easement area and front setback to Undercliff Road. These works have been deleted from the application, therefore the existing approved access and front setback remain unchanged (see plans dated 23.7.21).

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 1.9A Suspension of covenants, agreements and instruments
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D2 Private Open Space
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - D16 Swimming Pools and Spa Pools

SITE DESCRIPTION

Property Description:	Lot A DP 385601 , 57 Undercliff Road FRESHWATER NSW 2096
Detailed Site Description:	The site has an elongated irregular shape with a frontage to Undercliff Road of 12.19 metres (m), depth of up to 49.99m with a site area of 556.6 square metres (sqm). The land slopes steeply toward the street and has a natural cliff-line with rock outcrops near the rear boundary. The site currently contains a 3 storey brick dwelling with the original garage having been converted to habitable space on the ground floor. The rear of the house has been excavated into the side of the hill, below a natural escarpment. The land has a fall of 18m from the rear boundary to the street. A right of way easement covers the front part of the site that provides space for vehicle driveway access and pedestrian access to these dwellings the site and the adjoining dwellings at 53 and 55 Undercliff Road (This is termed a 'CVAMP' - common vehicle access for multiple properties). Surrounding residential development consists primarily of detached dwellings in landscape settings with some apartment buildings dispersed in the urban area. The Harbord Hotel is situated to the north-west of the site and Freshwater Village centre is located 280m to the north-west.

Most houses in the vicinity of the site are two to four storeys with variable setbacks to the street, due to the steep topography.

Freshwater Beach reserve is located 50m east of the site. Due to the site being along the edge of a ridge line / escarpment, the surrounding properties have coastal views toward Freshwater Beach, the ocean and the headland area at the northern end of Freshwater beach. The site is within area "B" and "C" for landslip classification. The cliff line at the rear of the site is a unique natural feature of the site, the Harbord Hotel and the "Freshwater" restaurant nearby is identified as Local Heritage Items under WLEP 2011.

Map:



SITE HISTORY

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

Development Application No.DA2020/1690 for alterations and additions to a dwelling house and swimming pool was withdrawn by the applicant on 26.2.2021. Design advice and discussions regarding this application form the basis for a new development application design (re-submission).

Development Application No.1984/375 (Consent No.84/433) to convert the existing dwelling to a dual occupancy was approved by Council on 9.10.1984. This use has been discontinued.

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
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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 of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allows Council to request additional information. Following the completion of the notification period some additional information was requested in relation to considerations regarding views, privacy, front setback, landscaping, setbacks and the like. Amended plans were subsequently received to reduce potential impacts on the surrounding environment and reduce the scope of works. The plan changes (dated 23.7.2021) made are capable of being addressed by conditions, therefore re-notification as per the Community Participation Plan is not required. The applicant sought make changes directly to the plans in order to address concerns raised by referrals and submission. <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. <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. <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. <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.

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	(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, subject to conditions. Considerations of slope, adjacent development, rock outcrops, streetscape, height, views, shadowing, privacy, traffic, parking, drainage, lot shape / area and environmental factors have been considered and where appropriate conditions are recommended to be followed during the construction certification to ensure appropriate works management.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/08/2021 to 10/09/2021 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:
Mr Anja Jamieson	55 Undercliff Road FRESHWATER NSW 2096

The following issues were raised in the submissions (multiple submissions by consultants and others are counted as a single submission from the property source they relate too) and each have been

addressed below:

1. **Driveway easement**
2. **Parking facilities**
3. **Landscaping**
4. **Privacy (visual and acoustic)**
5. **View impacts**
6. **Building bulk**
7. **Construction activity**
8. **Dilapidation**
9. **Front and side setbacks**
10. **Building height**
11. **Front setback area**

The matters raised within the submissions are addressed as follows:

- *1. Concern regarding access and work impacts within the shared right-of-way of driveway / easement area.*

Comment:

Amended plans have provided to exclude all works (except any minor stormwater connection), including fencing structures within the driveway easement area. This issue is also addressed under the heading "Clause 1.9A Suspension of covenants, agreements and instruments" within this report.

General construction access concerns are addressed by the requirement for a construction management plan. Therefore, this issue has been addressed by the amended plans whereby works within the easement are no longer proposed and conditions for a construction management will assist coordinated construction activity. This issue does not warrant refusal of the application.

- *2. Concerns regarding parking facilities at the front of the property with changes to the driveway area, fencing and off-street parking area.*

Comment:

No change is proposed to the existing approved driveway structure that forms a common vehicle access ramp to multiple properties (CVAMP). The proposal provides 2 compliant car garage spaces within the re-instated (and extended) original garage area of the dwelling. No objection is raised from Council's Development Engineers or Roads Assets team regarding the parking and vehicle access, since the amended plans now exclude all works from within the right-of-way area. This issue is addressed by standard conditions and does not warrant refusal of the application.

- *3. Concerns regarding landscaping area provided and landscaping works within the right of carriageway.*

Comment:

This issue is addressed in detail under the heading "*D1 Landscaped Open Space and Bushland Setting*" within this report. In summary, the existing landscaped area will generally remain unchanged, including the existing frontage along Undercliff Road. The new entry path, gate and entry point at street level has been deleted from the application and therefore has no impact on

the right of carriageway. Therefore, this issue has been addressed and does not warrant refusal of the application.

- *4. Concerns were raised regarding visual privacy and acoustic privacy for adjacent property in general for property at the rear (facing into upper room bedrooms of the proposal) and in particular from No.55 Undercliff Road.*

Comment:

The proposal has been designed to incorporate the use of planter boxes and screening devices where appropriate to ensure no unreasonable impacts on adjacent privacy or overlooking. Windows that are close to side boundaries are generally limited to bedroom windows / bathroom or secondary windows with suitable glazing sections and screening devices to ensure no unreasonable overlooking issues. Internal window blinds and shutters also assist to reduce overlooking and mutual residential privacy between dwellings. This includes screening to the front balcony areas to assist privacy along the alignment with adjacent dwellings.

The proposal satisfies the objectives of *Part D8 Privacy* of the Warringah DCP. This issue does not warrant refusal of the application.

- *5. Concerns were raised in respect to view impacts for No.55 Undercliff Road.*

Comment:

This issue has been assessed in detail under *Part D7 Views* within this report. The applicant has provided amended plans to ensure a built form that is consistent with Council's view impact evaluation and consistency with similar considerations for past development approvals granted for land at No.55 Undercliff Road and No.53 Undercliff Road. View assessment includes consideration of the setbacks, side boundary envelope, roof form and roof elements (clerestory windows / PV cells). In summary, the proposal is considered to achieve the objectives for view sharing under the WDCP, and no unreasonable impact is created in context of the design, views and density of the urban surroundings. In summary, this issue has been addressed and does not warrant refusal of the development application.

- *6. Concern regarding building bulk is an overdevelopment and exceeds the side boundary envelope.*

Comment

The building height and bulk, including side boundary envelope variation is influenced by the existing floor levels and wall alignments. This issue is addressed in detail under the headings "*D9 Building Bulk*" and "*B3 Side Boundary Envelope*" within this report. In summary, this issue has been addressed and does not warrant refusal of the development application.

- *7. Concerns were raised with respect to the construction activity impacts of noise, dust and traffic during construction phase.*

Comment:

A construction management plan is recommended by conditions. Standard conditions of consent will be applied in relation to construction hours and noise to manage expected activity (dust, work hours and the like) as a consequence of the construction and building processes associated with the development. This issue is addressed by standard conditions and does not warrant refusal of the development application.

- *8. Concerns were raised that the excavation risk, demolition and construction could result in damage to neighbouring property, including adjacent building assets.*

Comment:

The Geotechnical Report provided with the development application (Project AG20300 dated 25.11.2020, prepared by Ascent Geotechnical Engineers) recommends specific protection measures to ensure safe excavation and support. A condition is also recommended to ensure dilapidation risks are appropriately managed, including demolition and rock excavation. This issue is addressed and does not warrant refusal of the development application.

- *9. Concern that the building exceeds the 8.5m building height of the Warringah LEP.*

Comment

This non-compliance has been addressed in detail pursuant to Clause 4.6 of the Warringah LEP. In summary the non-compliant building height does not create any unreasonable environmental impacts on surrounding land and satisfies the objectives of the "height of buildings" development standard. This issue is addressed and does not warrant refusal of the development application.

- *10. Concern that the building exceeds the side boundary envelope and wall height of the Warringah DCP.*

Comment

Non-compliance with the building envelope and wall height is addressed in detail under the heading "B1 Wall height" and "B3 Side Boundary Envelope" within this report. In summary, the proposal satisfies the merit considerations of the objectives of these controls. This issue is addressed and does not warrant refusal of the development application.

- *11. Concern that the building includes work within the front boundary setback and is not consistent with Part D13 Front Fences and Front Walls of the Warringah DCP.*

Comment

No works are proposed within the front setback area and no new front walls or fencing are proposed. Therefore, this issue does not warrant further detailed merit assessment or refusal of the development application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported with conditions. This application is for the alterations and additions to an existing residential dwelling. Alterations include the minor demolition of existing site structures in order to facilitate internal layout re-configurations, as well as additions which are inclusive of an additional floor, swimming pool to the rear, as well as a new pedestrian entry and bin storage at the front of the site within the road reserve.

Internal Referral Body	Comments
	Councils Landscape Referral section has considered the application against the Warringah Local Environmental Plan, and the following Warringah DCP 2011 controls: • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation • E6 Retaining Unique Natural Features Original Comments - 31/08/2021 The Statement of Environmental Effects provided with the application notes that no prescribed trees are required to be removed as a result of proposed works, however a portion of vegetation is required to be removed at the front of the site in order to allow for the construction of a new pedestrian entry. This statement is largely supported by the Architectural Plan and Site Survey provided as it is clear no significant trees are proposed to be removed. It is noted that the subject site is required to achieve a minimum landscape area of 40% for the total of the site according to control D1. The existing site has a total landscaped area well below this requirement at 28%, with the proposed works further reducing this to 24%. It is understood that the existing driveway at the front of the site is largely the cause of this non-compliance, as it provides access to the neighbouring property at 55 Undercliff Road. This driveway reduces the ability for the site to effectively reach this total landscaped area as the front setback is largely hardstand that is required to allow minimum turning circles to be achieved. Should planning see no issue with this shortfall, landscape referral raises no concerns. That being said, concern is raised regarding the removal of non-prescribed vegetation at the front of the site in order to accommodate this additional pedestrian entry and bin storage area. This vegetation provides valuable amenity to the adjoining streetscape, whilst also softening the bulk and scale of the built form. The impacts of proposed works are expected to be larger than just the footprint of proposed works, as due to the level change, significant excavation and demolition would be required. These works are likely to degrade this existing garden bed area, resulting in a number of plant species experiencing gradual decline until failure. The removal of vegetation would be necessary, and in turn, should be adequately replaced to ensure this visual amenity and built form mitigation is retained. Due to the significance of proposed works at the front of the site, and the potential to negatively impact the streetscape character of the locality, a Landscape Plan is required in accordance with Councils Development Application Lodgement Requirements. This Landscape Plan is required to demonstrate how proposed landscape treatments at the front of the site, through the use of a variety of locally native shrubs, grasses and groundcovers, are to effectively soften the overall increase in built form. Where possible, small trees should also be incorporated to provide greater height and hence, having a greater

Internal Referral Body	Comments
	ability to mitigate the increase in dwelling size. It is also noted the Architectural Plan indicates that some on-slab planting is proposed towards the rear of the site, as well as on the ground floor adjacent to the rumpus room on the northern side of the terrace. Further details of this planting and associated soil depths shall be required. This Landscape Plan, and required planting at the front of the site, is key to satisfying control D1, as key objectives of this control include "to enable planting to maintain and enhance the streetscape", "to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building", as well as "to enhance privacy between buildings". No further concerns are raised regarding proposed works as it is clear that existing trees, vegetation, and rock outcrops clear of proposed works are to be retained. This is a desired outcome which would be supported. The retention of existing trees, including those in neighbouring properties is key to satisfying control E1, as key objectives of this control include "to protect and enhance the urban forest of the Northern Beaches", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". The landscape component of the proposal is therefore not currently supported due to minimal planting proposed at the front of the site, and limited details regarding the proposed on-slab planting elsewhere within the site. It is clear that proposed works, specifically the pedestrian entry and bin storage area, will impact existing vegetation at the front of the site, and in turn, resulting in its gradual decline and failure. For this reason, it is recommended that a Landscape Plan be provided with the application in accordance with Councils Development Application Lodgement Requirements, detailing compensatory native shrub, grass and groundcover planting at the front of the site. This is key to maintaining the streetscape character of the area, whilst also softening and mitigating the increase in bulk and scale as a result of proposed works. Upon the receipt of the required information, further assessment can be made. <u>Updated Landscape Comments - 15/09/2021</u> Following original comments, the Planning Department has notified the Landscape Referral section that proposed works in the front setback, inclusive of the new entry, entry path, and bin enclosure have now been removed and are no longer part of the proposal. Generally, the existing site conditions in this are to remain unchanged. See Revised Plans dated 23.7.2021 As the proposed works in the front setback have largely been removed, the need for a Landscape Plan is no longer required. It is noted that a number of planting areas are still proposed on-structure

Internal Referral Body	Comments
	with limited plant species identified, however, due to the relatively small nature of these areas, plant requirements can be addressed through conditions of consent. Screen planting is required to achieve a minimum height of 2 metres in order to effectively screen and increase privacy for the site, but also for the residents of the property to the north. The landscape component of the proposal is therefore supported subject to protection of existing trees and vegetation, exiting rock outcrops, as well as the completion of landscape works as indicated on the Architectural Plans.
NECC (Coast and Catchments)	Supported without conditions. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA. On internal assessment the application satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the CM SEPP. Therefore the proposal is supported for approval without condition.
NECC (Development Engineering)	Supported with conditions. Assessment officer provided: " For this referral the applicant has been in touch and advise they are not going to do any works in front setback in front of the house. Basically leave the status quo unchanged, partly as this is in an easement / shared ROW area so easier to take it out of the DA. They are OK to have a condition / revised referral advice to this effect. This means the driveway area is stays as approved / as is." See Revised Plans dated 23.7.2021 As the assessment officer's information, there is no proposed work on the road reserve and ROW. As such, Development Engineering has no objection to the application subject to the following conditions of consent.
Road Reserve	Supported without conditions. Original Referral comments: The development proposes to cut through the existing dimensioned sandstone retaining wall, through existing pathway and excavate into the public road reserve to create a private vestibule with shower and security gate together with a bin storage area within the property boundary. Although no dimensions are provided, scaled off measurements are approximately 3.6m deep and 4.3m wide. Stairs are proposed to lead up to and connect with existing stairs to the property. A security gate on the wall face is proposed.

Internal Referral Body	Comments
	The proposal represents privatisation of public road reserve and is not supported. Pedestrian access is available along the top of the existing wall via a pedestrian pathway. No details are provided regarding the structural aspects of the existing sandstone wall and are not addressed in the geotechnical report. The origins of the wall are unknown however may have been constructed by former property owners to establish support for the shared driveway to 55 & 57 Undercliff road. The survey shows a right of carriageway (ROC) 16m wide across the frontages of 55 & 57. The proposed excavation works on the road reserve and within the ROC would dissect the existing pathway preventing access along it. This may mean the owners of 57 may be forced to use the steep driveway for pedestrian access to their property. As such the works within the public road reserve cannot be supported and must be removed from the application. Amended referral response 22/9/21: Assessment officer provided: " For this referral the applicant has been in touch and advise they are not going to do any works in front setback in front of the house. Basically leave the status quo unchanged, partly as this is in an easement / shared ROW area so easier to take it out of the DA. They are OK to have a condition / revised referral advice to this effect. This means the driveway area is stays as approved / as is." See Revised Plans dated 23.7.2021 As the assessment officer's information, there is no proposed work on the road reserve and ROW . As such, there is no impact on existing road infrastructure. 

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid does not have any objections for the proposed development as detailed in the referral response provided 25.8.2021.
Aboriginal Heritage Office	Supported with conditions. <i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i>

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. Any demolition materials such as lead paint / asbestos if identified during works will be required be appropriately managed and safely disposed of in accordance with conditions as part of the alterations and additions.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A398290 02, dated 22.7.2021 for the dwelling house. A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid and a referral response was received on 25.8.2021 that raised no objections, with advisory requirements.

Other Service Authorities

The proposal does not require referral to Transport for NSW (TfNSW, formerly RMS) and no other Service Infrastructure Authority referral issues are raised pursuant to the SEPP. Any Sydney Water requirements are managed separately by Sydney Water administrative processes.

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:

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 building position is within an established urban zone and does not create any adverse environmental impacts on the coastal environment or unreasonable visual impacts on public places.

As such, it is considered that the application complies 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 hillside position of the house is sufficiently setback from the coastal hazard area to comply with the objectives and requirements of the SEPP to ensure no increased risk.

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	10.22m (external RL32.58 to RL42.8 above)	20.2%	No*

*Height of Buildings is measured from an extrapolated existing ground line which is consistent with the practical method adopted by the NSW *Land and Environment Court* in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. Height above existing ground (excavated) is however detailed within the Clause 4.6 assessment to provide comparison of height measurements.

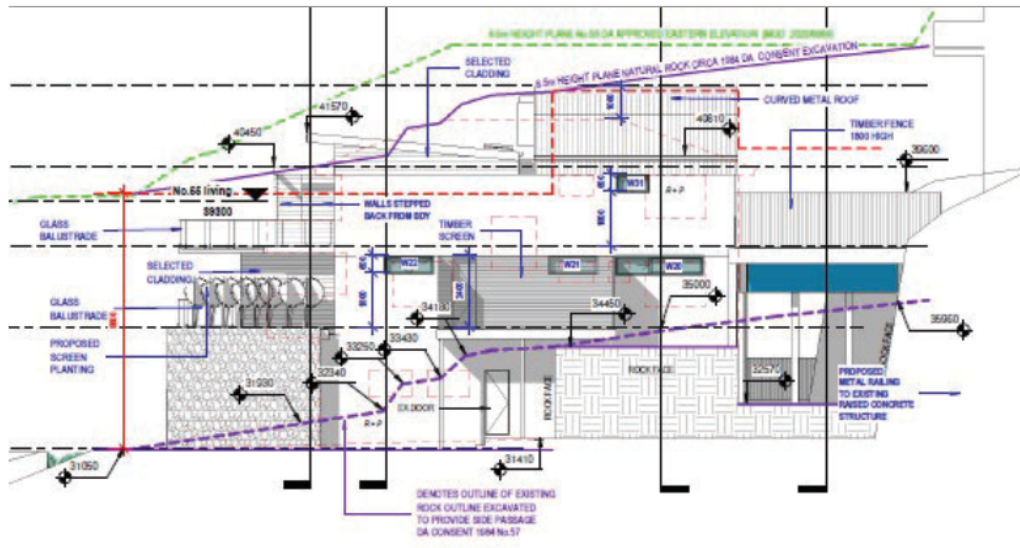


Image: Height line showing past excavation and extrapolated height including adjacent EGL.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

1.9A Suspension of covenants, agreements and instruments

For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

- This clause negates the provisions of any agreement, covenant or other similar instrument that restricts the carrying out of development, including right of way easements. The subject site is affected by a private easement restriction however this clause ensures that Council is not required to apply any requirements serving that purpose of the easement in enabling the development proposed. The applicant has however deleted all works (except any minor stormwater connection) within the front easement area and front setback to reduce the scope of works.

4.6 Exceptions to development standards

Description of Non-compliance:

Development standard:	Building Height
Requirement:	8.5m
Proposed:	11.9m EGL (10.22m from NGL)
Percentage variation to requirement:	40% EGL (20% from NGL)

The applicant has provided the following height levels for the new additions to the building based on excavated EGL shown on the plans. This is to outline the difference between methods of measuring height in understanding the existing over excavation on the site demonstrated against NGL as per the applicants written submission:

- North-West Elevation (Front) RL31.05 at 10.51m (RL41.56)
- North-West Elevation (Rear) RL34.45 at 8.65m (RL43.1)
- South-East Elevation (Front) RL31.37 at 10.19m (RL41.56)
- South-East Elevation (Rear) RL32.58 at 10.52m (RL43.1)

These extrapolated levels give a height variation of 1.7% and up to 20% due to the depth of past excavations and vertical cutting of the natural topography.

For the purpose of various methods of approaching consideration of the realistic relationship to the surrounding environment, the 'Height of Buildings' is measured from an extrapolated existing ground line which is consistent with the practical method adopted by the *NSW Land and Environment Court* in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. In this, the court regarded that it was unhelpful when measuring height to follow excavation lines below ground level that "results in an absurd height plane with a large and distinct full storey dip in it as it moves across the site".

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 will present as a 3 storey form, consistent with 53, 55 and 61 Undercliff Road, and as further evident along the southern side of Undercliff Road due to the significant slope of the topography

- *The proposed loft level is setback significantly from the front wall of the main building perimeter and can not be seen when viewed by pedestrians at street level. The loft level does not alter the streetscape.*
- *The proposed loft level provides greater side setbacks than that required by council's controls, and is setback significantly from the side perimeter wall of the main building and can not be seen from the immediately adjoining properties – 55 and 61 Undercliff Road due to the significant setback.*
- *The proposed loft level achieves a height that is less than the habitable ground level of the immediately adjoining property to the rear (63 Crown Road), and therefore presents no visual bulk or scale upon these properties.*
- *The proposed loft level complies with the rear setback control.*
- *The proposed loft level balcony contains a perimeter privacy planter that prevents downward overlooking into the private areas of 61 Undercliff Road.*
- *the primary private open space areas of 55 and 61 Undercliff Road are the northern balconies located directly off the living areas, and no change is proposed the solar access received to these private open space areas.*
- *The proposed additions do not contribute to any loss of significant views enjoyed from the public realm or from adjoining properties."*

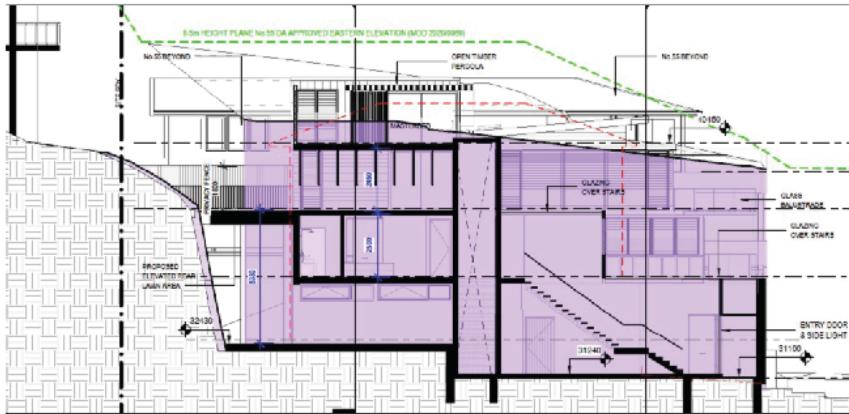


Image: Height of Buildings is measured from an extrapolated existing ground line which is consistent with the practical method adopted by the NSW Land and Environment Court in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 .

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 an acceptable design that will not unreasonably impact the amenity of the surrounding urban or natural 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).

In considering the proposal, it is noted that the bulk, height, setbacks and selected elements of the proposal have been designed in consideration to minimise elements that contribute to height and style the upper level to ensure non-complying elements do not contribute to unreasonable views and overshadowing. Generally the height of the building and distribution of built form has been made with regard to the Warringah DCP and WLEP. The subject land is situated below a natural escarpment and hillside position (having been deeply excavated along the western boundary) that influences the design response given the existing floor levels retained, side and front setbacks positions, excavation, existing 3 storey built form, and amenity considerations for coastal views in context with surrounding houses.

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 standards

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of Buildings' of the Warringah LEP 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 proposed variation to the building height (including the maximum wall height) is not readily distinguished when viewed from the Undercliff Road frontage due to the downslope position of the building. The land has an average gradient of 1:4 and the existing excavation influences the building height and roof elements that exceed the the corresponding height plane. In response to this, the addition of the bedroom on the top floor is shaped to appear in a loft style ('room within a roof') when viewed from the west and south.

The subject site is constrained by the shared driveway toward Undercliff Road and very steep frontage. Open balcony elements, non-trafficable roof area and roof eaves with a part skillion and part low pitch and curved roof form are used to reduce building bulk whereby building profile maintains the hill side backdrop with appropriate colours and materials. The position of the proposed alterations and additions are consistent with the existing wall lines and influenced by the existing floor levels. The uneven topography and excavated contours of the land are considered to strongly influence the requirement to seek variation under Clause 4.6. The styling of the building is consistent in terms of streetscape and general landscape elements. The built form is consistent with the existing pattern of development in the steeper parts of Undercliff Road. Therefore, the building height is acceptable with regard to the streetscape when viewed in context with adjacent dwellings along the higher portions of Undercliff Road and when viewed from the lower public road level.

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

Comment:

The roof form is of a varied form and includes a clerestory element for visual interest and internal amenity. Selected parts of the upper floor elements have been designed to minimise adverse impacts from any non-compliance with the building height control. Detailed solar access diagrams are provided to demonstrate that the proposed height variation does not create any unreasonable impact on solar access to adjacent land. Detailed view considerations have been made with the assessment of the proposal, including considerations made by the applicant to accommodate view sharing across the site toward the foreshore of Freshwater beach area and the ocean.

It is considered that the proposal is consistent with this objective.

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

Comment:

The site is not in a location where principal public views lines are gained across the site from a

public beach / Freshwater reserve or similar. It is considered that the proposed height variation maintains consistency with 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 alterations and additions and overall building height is acceptable with regard to the streetscape when viewed in context with adjacent dwellings in Undercliff Road as it presents in context the pattern of surrounding development to the west and south of the site. It is considered that the proposed building height variation maintains consistency with 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 proposed height variation does not offend this objective of the zone in that the use of the remains (for detached housing) and is provided within a landscape setting that is compatible with the scale, density and pattern of surrounding development.

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:

This clause is not relevant to the proposal as no other (non-residential services or facilities) are proposed.

It is considered that the development satisfies this objective.

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

The height variation does not impact the landscape setting of the site and the surrounding steep topography. The higher apartment buildings and houses to the south and west form a backdrop to the dwelling that are consistent with the pattern of surrounding development in the landscape.

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, 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 is assumed by the Development Determination Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Front 8.9m	23.7%	No*
		Rear 10.3m	43%	No*
		East 10.3m	43%	No*
		West 10.0m	38%	No*
B3 Side Boundary Envelope	45 degrees at 5m	East Breaches envelope (up to 2.6m)	32%	No*
	45 degrees at 5m	West Breaches envelope (up to 2.4m)	36%	No*
B5 Side Boundary Setbacks	0.9m	East 0.9m to 1.5m Lower Ground to Ground	N/A	Yes
		0.9m to 2.9m First floor and pool	N/A	Yes
		2.9m Loft level (balustrade 1.0m)	N/A	Yes
B5 Side Boundary Setbacks	0.9m	West 0.9m to 1.3m Lower Ground to Ground	N/A	Yes
		1.0m to 1.5	N/A	Yes

		First floor and pool		
		1.5m Loft level	N/A	Yes
B7 Front Boundary Setbacks	6.5m	15.9m Dwelling garage wall	N/A	Yes
		First floor 16.1m (balcony) to 20.0m (wall)	N/A	Yes
B9 Rear Boundary Setbacks	6.0m	7.5m Dwelling wall	N/A	Yes
		3.9m Pool	Decks and pool permitted 50% area.	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting Site area 556.6 sqm	40% (222.4sqm)	122.7sqm (22%)	45%	No*

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

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	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

The maximum wall height is up to 10.3m at the rear and side wall, being a variation of up to 43%.

Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).

Merit consideration:

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

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

Comment:

The non-compliance with the wall height control relates to both the eastern and western wall planes as well as at the front and rear of the building. Generally this is a consequence of the established (approved) wall height of the existing dwelling whereby the land has been deeply excavated to accommodate the original dwelling footprint on the steepness of the site. The variation to the wall height also includes the situation that the existing hipped roof is being replaced to accommodate a new loft-style master bedroom and clerestory window roof form. (Clerestory roof features or raked ceilings are not strictly regarded as wall plane due to these spaces being internally part of a habitable room and that roof space is "wholly located within the roof space")

The building is visible from the coastal zone (Freshwater beach area) but is consistent with the height / scale and density of dwellings to the west and the dwelling is shielded by the backdrop of the escarpment and residential flat buildings to the south. The front wall elements are consistent with the existing building, except that the dwelling is extending forward. The wall height has a minimal impact on overshadowing to the south and east by comparison with the existing building height. The buildings bulk and scale is consistent with newer (contemporary) dwellings along Undercliff Road to the west of the site that are on steeply sloping sites. Despite the wall height non-compliance at the front, rear and side elevations, the building still achieves view sharing. The proposal is consistent with this objective.

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

Comment:

There are no significant trees on the site as the land has very thin soil profile with bedrock close to the surface and the escarpment at the rear forms a natural backdrop to the site. This is part of the natural topography of Undercliff Road with the pattern of surrounding development whereby most houses do not have large canopy trees. The site is on a north facing slope with higher land behind the house providing a backdrop for houses along Undercliff Road. A detailed landscape plan is provided that has various tree and shrub planting of various heights suitable for the space provided and retains most of the landscaping in situ. The proposal is consistent with this objective.

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

Comment:

The non-compliance with the wall height affects the outer external walls since the existing dwelling is 3 storeys and the building footprint was deeply excavated to the side boundaries by up to 5m. The wall height will have no unreasonable impact on view sharing with regard to public land. Issues of view sharing from surrounding private property is addressed in detail under the heading *D7 Views* within this report.

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

Comment:

The non-complying sections of the loft style bedroom face the rear escarpment and east with a sloping roof form toward the western elevation. The eastern side of the loft bedroom is setback from the eastern side wall to minimise bulk and scale along the eastern wall. The height of the main eave line is consistent with the dwelling house to the west in that the two dwelling 'share' a similar height position against the natural escarpment along Undercliff Road. No unreasonable amenity impacts of overshadowing, privacy, or spatial separation impacts will result from the non-compliant wall height with regard to adjoining private properties.

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

Comment:

The garage area proposed is enlarging and re-instating the original garage that was part of the existing house which has been deeply excavated into the hillside as part of the lower ground floor area. The main living areas are however on the first floor level and the existing floor levels therefore influence the established wall height. Minimal excavation is proposed since the original house was built within a wide excavated building platform.

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

Comment:

The building alterations will restyle to the existing hipped roof and brick dwelling to a contemporary style with an innovative roof and small clerestory element, including a loft style master bedroom replacing the existing roof. Variation and visual interest (including light and ventilation) is provided by the skylights and window spaces and balcony space that provides an innovative functional roof design.

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

B3 Side Boundary EnvelopeDescription of non-compliance

The control allows for a building a side boundary envelope of 45 degrees at 5m above the side boundary. The development breaches the control along the eastern and western elevation by up to 2.4m or 36%.

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 is generally consistent with the bulk and height of similarly positioned dwellings that have been subject to major renovation work along southern side Undercliff Road. The plans have been clearly detailed to demonstrate the influence of the steep natural topography and relationship to the deep existing excavation with regard to the non-compliance along the side boundary envelope. This is pronounced toward the front and the eastern side of the site where natural slope falls away toward the north and east. The loft style master bedroom has been shaped to conform to the side boundary envelope. Overall the side boundary envelope variation is generally consistent with the existing building height and influenced by the height of the existing floor to floor levels for the alterations and additions where the building is being extended to the front and rear, including terrace and balcony features. In this regard the proposal is consistent with this objective on merit consideration.

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

Comment:

Physical separation is consistent with the established building separation. For new elements of the articulation is provided at selected parts of the dwelling by the use of balconies, screens and minor roofed sections with no unreasonable loss of privacy or solar amenity to adjacent buildings. The submitted shadow diagrams (Drawing No.A121, dated 23.7.2021) demonstrate compliant solar sunlight is provided to adjoining properties pursuant to Warringah DCP. The proposal is consistent with this objective on merit consideration.

The proposed development allows for a reasonable level of amenity, solar access and privacy to be obtained from adjoining or nearby dwellings.

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

Comment:

The proposed development responds to the site topography by minimal excavation, utilising the existing floor levels and integrating the new additions and additional floor space with the existing building bulk as much as practicable. While the close setbacks to the side elevations create non-complying elements this does not create unreasonable impacts on views across the side boundary toward Freshwater beach coastal area in that adjacent properties share the views toward the north east.

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

C3 Parking Facilities

The proposal seeks to reinstate the original garage area and extend the garage as part of the alterations and additions that relies on the existing access.

Merit consideration

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Dif
Dwelling house	2	2	2	
Total		2	2	

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The frontage area around the garage will remain unchanged as this area is part of an easement for vehicle access shared between No.55 Undercliff Road. The garage is integrated into the building and the driveway access from Undercliff Road remains unchanged.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The garage is consistent with the similar arrangement for vehicle parking on No.55 Undercliff Road and the garage structure does not create any unreasonable impacts on the streetscape due to the steep escarpment in front of the building and CVAMP area. Subject to conditions no issues of safety of access are raised by Councils Development Engineers or Road Assets team.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The site is required to have 40% total landscape area and the proposal retains the existing landscape area of 122sqm (22%).

Merit consideration

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

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

Comment:

The site presently has some small trees and mixed vegetation at the front and rear of the site. Landscaping for the site is concentrated mainly at the rear and the proposal seeks to maintain the principal landscape spaces at ground level and enhance the planting regime. Minor shallow landscape soil zones have been as a raised grassed area (terrace) at the rear of the house in addition to the natural landscape areas of the site. Planting in the front setback is keeping the existing low dense plantings which is appropriate to the coastal environment. Landscape planters are provided at selected balcony levels assist with privacy with neighbours side view outlook and amenity.

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

Comment:

Details are provided on the concept landscape plan, dated 5.1.2021, prepared by CAD Draft P/L and essentially maintain the existing natural rock areas and landscaping unchanged. The shared driveway area takes up a substantial proportion of the site that might otherwise be

available for landscaping which is a principal reason for the non-compliance.

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

Comment:

Landscape planting is shown in concept details at the front and rear of the site which consists of a mix of shrubs and low plantings to enhance the setting of the building and the streetscape. Generally existing native plants will be maintained and supplemented with minimal change.

- *To enhance privacy between buildings.*

Comment:

Landscaping plantings along along the setbacks beside the house side wall is limited due to the excavated rock zone and narrow access. At ground level the side boundary fencing provides reasonable privacy. Any changes to fencing between affected neighbours and administered under the *Dividing Fences Act 1991* (not by Council) which may also involve boundary property issues with site levels / ground runoff variations and the like.

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

Comment:

The proposal includes a landscaped (shallow grass rear elevated terrace) area provide a level area off the rear living room. The ground level here was originally deeply excavated and the new terrace is consistent with the original natural ground level to meet the needs of the occupants, and includes a plunge pool at the rear for recreation. These areas are accessible to principal living zones and serve to provide extended areas to the house.

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

Comment:

The house private open space areas, terraces and lower ground level has space in the rear yard for service functions, including domestic uses and clothes drying.

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

Comment:

Generally the site has very shallow soils and sandstone bedrock very close to the surface and therefore stormwater infiltration is limited and drainage of stormwater to the street is to be managed as detailed on the stormwater management plans (drawn by *Ross Engineering*).

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

D2 Private Open Space

Description of non-compliance

The proposal includes a rear lawn covered terrace as private open space with dimensions of 6.1m to 3.8m as minimum dimensions.

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 all residential development is provided with functional, well located areas of private open space.*

Comment:

The existing house has limited private open space area in a partly excavated space at rear of the house below the main living area. The alterations and additions seek to improve the accessibility of private open space area by integrating a pool and elevated terrace area at the rear. The position of the house wall at the back remains unchanged and therefore the open space area is restricted on one side to 3.8m by the natural rock feature. The proposed design of the private open space areas suitably address this objective.

- *To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.*

Comment:

The level is similar to NGL on the western side but is below the existing rock outcrop escarpment to be retained behind the house. The proposed design of the private open space areas suitably address this objective.

- *To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.*

Comment:

The terrace however provides a functional area and small plunge pool for the recreation of the property beside the rear living area that is on the second floor. The proposed design of the private open space areas suitably address this objective.

- *To ensure that private open space receives sufficient solar access and privacy.*

Comment:

The rear terrace is in self shadow by the existing house for most of the day between 9am and 3pm on 21 June however the front living area terrace has full sun all day. Therefore, the proposed dwelling will receive sufficient solar access due to the elevated position. Privacy is maintained by side fencing, screens and normal separation distances for detached housing that is consistent with the pattern of surrounding development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the clause and accordingly, this assessment finds that the proposal is

supported, in this particular circumstance.

D6 Access to Sunlight

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 reasonable access to sunlight is maintained.*

Comment:

The existing site and adjacent land have good direct solar access to the north with not overshadowing from trees or other large buildings to the north. Overall dwellings on the southern side of Undercliff Road have reasonable direct access to sunlight despite topographical constraint along the rear setback area. Solar access to adjacent land is considered to be consistent with the considerations made with the assessment principles outlined in *Benevolent Society v Waverley Council (2010) NSWLEC 1082*. On merit the proposal is considered to be consistent with this objective.

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

Comment:

The proposal has been designed to include a loft style master bedroom area that assists in minimizing changes to solar access cast toward the southern side of adjacent land and the subject property.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

the solar access diagrams show the extensive self shadowing of the rear yard for the site and shadows cast by adjacent dwellings. The additional overshadowing between 9am and 3pm on 21 June is mostly cast toward adjacent roof areas or inaccessible parts of the rear setback area along the natural escarpment.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposal demonstrates no unreasonable loss of solar access along side windows (See Dwg A-121 dated 23.7.2021) side elevation solar diagrams to adjacent land, including access to natural light and direct sunlight for passive solar heat. The proposal maintains consistency with this clause.

- *To minimise the need for artificial lighting.*

Comment:

The proposal does not cause any unreasonable loss of natural light to adjacent land that creates an adverse dependency on daily use of artificial lighting

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

D7 Views

Merit consideration

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

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

A site visit of the subject property, and No.55 Undercliff Road demonstrates the views are expansive coastal views and district views at upper storey level and to a lesser extent at mid-level floor level extending from westerly to easterly across Freshwater suburb to include Freshwater Beach area, coastal headland and the ocean. There are district urban views to the north and north west from properties adjacent the site along Undercliff Road, due to the north facing slope / escarpment position. Depending on a particular position / vantage point the view changes substantially from being a smaller part of the Freshwater Beach to a more open view of the beach area, with the wide view angle afforded by the topography along Undercliff Road and open area of Freshwater Beach reserve. Focal elements at the northern end of Freshwater beach include the public swimming pool, dunes and reserve area, surf zone, headland and water. The area most affected includes the northern end of the beach area and elements of ocean views due east.



Image: Principal view to the north east from No.55 Undercliff Road from living / dining / kitchen area.

- 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 views enjoyed from are principally from the upper storey level living areas for surrounding properties to the west of the site and directly across the side boundary due where there is a wide front setback to adjacent buildings. The dwelling of No.55 Undercliff Road has ocean views toward Freshwater Beach, at an acute viewing angle toward the east and north-east. Broad alternate views of the Freshwater urban hinterland are also obtainable from all front windows (facing north). From a sitting position the view is generally more of a horizon view from the kitchen but sitting views from dining area and front balcony area are achieved due to the full height glass windows. (Note: Elements of the house additions have been hanged from the previous DA design that was withdrawn to reduce the view impacts on the direct line of sight across the front balcony and corner of the dwelling house. This redesign also resolved any view issue for properties at the rear of the site in Highview Avenue / Crown Road).



Figure 3: Present view across site from front of kitchen area, standing position and proposed impact shown by montage.

• 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 eaves and forward extension of the dwelling encroach into the easterly view line due to the similar building alignment being sought and impacts a minor part of the north easterly water views available from the upper storey (living area) of No.55 Undercliff Road. Generally both dwellings have expansive views extending more than 180 degrees from the front balcony areas. The view is a broadly accessible view maintained from the central area of the living room as well as the large front balcony area. The focal point of the beach, ocean pool area is not eliminated from being visible from the front areas of the dwelling within No.55 Undercliff Road. When considered in terms of the extent of the impact in comparison to the whole view and in context of the wholistic consideration the view impact is "moderate". The impact is not considered 'minor' since the incursion is in the eyeline of the forward additions, and affect the due east view also, but the principal north easterly view is not unreasonably affected at standing and sitting positions from the front area of the living living room and front balcony.

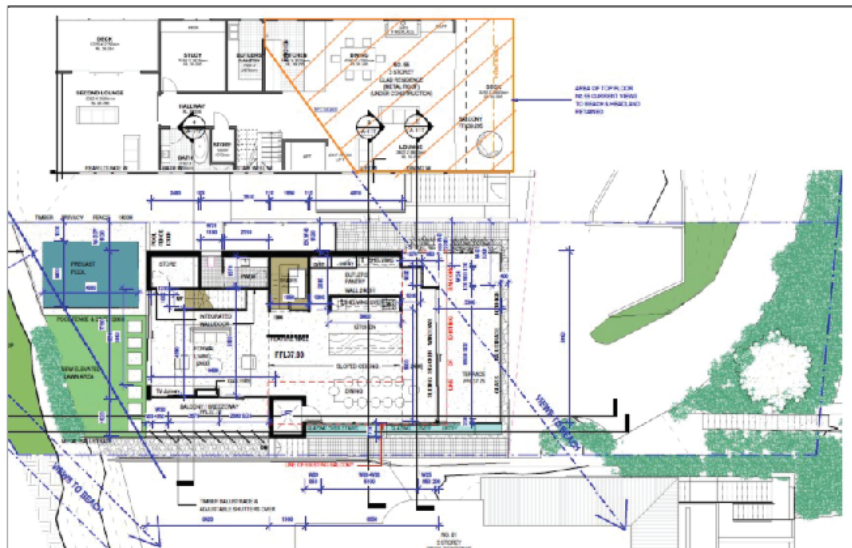


Image: Plan view demonstrating view line retained across No.57 Undercliff from principal living area.

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:

Properties along Undercliff Road do not have consistent setbacks and therefore many dwellings share views in an easterly and northeasterly direction toward the ocean and Freshwater beach area. It should be noted that a previous DA for alteration and additions was withdrawn (at the request of Council) to allow the applicant to provide a more skillful design for view sharing including minimising non-compliance with the height controls and relevant built form controls. It is considered that this redesign has achieved a satisfactory design response with regard to the development controls and the planning principle for view consideration in terms of the viewing angle, overall view access, height compliance and minimising associated considerations impacts of privacy, topography, site levels, the existing building structure (such as walls and floor levels) and the pattern of surrounding development. Conditions are recommended to ensure the proposed RL's for roof, balcony elements and the like are confirmed during construction to avoid irregularities occurring.

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

Comment:

As stated under the heading "site history" within this report the previous application for alteration and additions by the applicant was withdrawn to create an opportunity to better assist view sharing for an improved design solution and address previous concerns regarding view sharing. Overall the alterations and additions are influenced by the existing house floor levels, roof height, wall alignments and hillside position. On merit consideration the proposal is consistent with this objective.

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

Comment:

There are no large trees within the front setback of the development site. No significant change to landscaping is proposed although there is a minor reconfiguration to some of the structural / ground level side setback elements and conditions are recommended for suitable screen planting in the balcony planter box to allow view sharing.

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

D8 Privacy

Merit consideration

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

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

Comment:

The alterations and additions provide for consistent privacy to the existing house at the front and rear with the provision of integrated privacy screen treatments, landscape planter elements and window position / style to maintain appropriate visual privacy to No.55 Undercliff Road and No.53 Undercliff Road. At the rear the site is protected by a steep rock escarpment from buildings to the south of the site. The bedroom areas, being low use rooms (normally having block out blinds/ internal curtains fitted assist with privacy) do not create unreasonable impacts toward the rear or side setbacks of surrounding land. The proposal generally maintains similar broad outlook to the ocean afforded by the existing house and overlooks roof areas of dwellings to the east, while open space areas are situated at the front and rear of the site.

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

Comment:

The design of the alterations and additions is influenced by the layout and floor to floor levels of the existing house. The upper storey added is designed as a loft style bedroom to provide an innovative solution with the change in roof style replaced for the addition of habitable space. The alignment of the property reflects the pattern of development consistent with major renovation work to other houses along Undercliff Road whereby access to views is balanced with privacy considerations, due to the rocky steep topography, narrow, lot widths and density of residential development. The changes to the front balcony and rear balcony / setback provide a suitable design solution with regard to views and casual privacy. Windows and screening devices are suitably designed to ensure no unreasonable impacts on adjacent land for the surrounding residential environment.

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

Comment:

The design will include appropriate security and casual observation of the street / front entry area to the dwelling.

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

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The alterations and additions achieve the desired objectives to ensure that the development does not become visually dominant by virtue of its height and bulk, to ensure adequate daylight, solar access and privacy by providing spatial separation between buildings and to ensure that

development responds to the topography of the site. The dwelling is consistent with the established pattern of development along Undercliff Road where dwellings are commonly set high on their sites to take advantage of coastal views.



Image: Existing dwelling house building bulk in comparison to surrounding buildings viewed from Undercliff Road.

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

Comment:

The design incorporates changes in setbacks to both side boundaries along the side wall plane and changes at the front and rear to break up the appearance of building bulk. The use of various materials/ fenestration, balcony elements and the like assist to break up the side wall plane. Different elements such as screens, roof form for the master bedroom, landscaping planters / balcony elements and the like also assist to break up upper storey addition to satisfy this objective.

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

D16 Swimming Pools and Spa Pools

Merit consideration

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

- *To ensure swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.*

Comment:

The DCP seeks that swimming pools are located at ground level and in the rear yard which assists to achieve this objective. In this case the rear yard has been deeply excavated and there is a natural rock ledge across part of the rear setback. The living room level is at first floor level

and the land rises steeply at the rear to the back boundary. In order to provide a pool and small usable rear yard / private open space area the rear terrace has been designed to include a pool and lawn covered raised terrace adjacent the living area at RL37.8. The pool coping is consistent with the existing ground level along the western boundary and a 1.0m setback is maintained to the eastern boundary to assist with privacy separation along the fenceline. Therefore, there is no unreasonable impact on privacy, streetscape and residential amenity while maintaining the adjacent rock shelf in-tact.

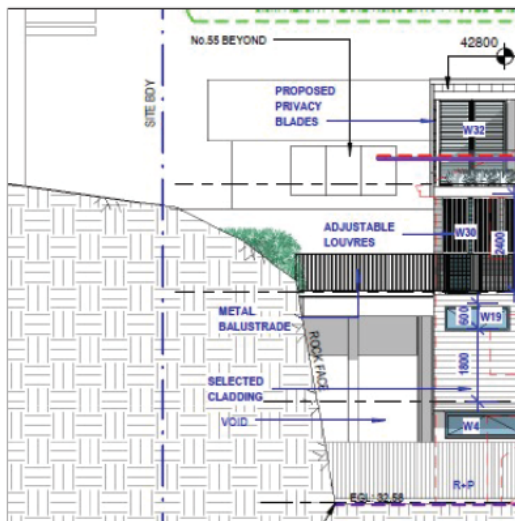


Image: Position of pool and rear terrace with EGL to the rear.

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

Comment:

The position of the pool in the rear yard is more suitable to locating a pool in the front yard that would be visible to the streetscape. The area behind the house was deeply excavated for the original dwelling and therefore the pool will infill that space (currently occupied by a shed). The terrace area provides an artificial extension toward to the adjacent rock face at the living area (rear) of the house and usable private open space adjacent the pool. The pool is a 'plunge pool' size and is bordered by a 1.8m privacy fence to ensure screening between the site and No.55 Undercliff Road. The adjacent natural rock shelf to the rear will be retained in situ and gap provided for natural water runoff.

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

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

A monetary contribution of \$18,994 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,899,402.

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.

The proposal seeks alterations and additions to a dwelling house that involves a variation of up to 20.2% for NGL (and up to 43% against the excavated EGL) with regard to the Height of Buildings

development standard. The variation to the building height, side boundary envelope and wall height is influenced by the original deep excavation (up to 5m) from the natural ground levels along the western boundary. The established floor levels and wall alignment of the existing building also influence the associated non-compliance with the built form controls.

Concerns regarding, height, view sharing, privacy, access and amenity issues raised in submissions have been addressed to ensure no unreasonable impacts on surrounding land. The exclusion of any works (apart from minor stormwater connection) within the shared right of way, has addressed previous concerns regarding works within the front setback area.

In conclusion, the principal issues in the assessment have been addressed and the building height variation is supported pursuant to the Warringah LEP and subject to conditions the alterations and additions will not create any unreasonable amenity impacts pursuant to the WDCP. 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 DA2021/1439 for Alterations and additions to a dwelling house including swimming pool on land at Lot A DP 385601, 57 Undercliff Road, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-106 Demolition Plans Lower Ground Floor	23.7.2021	Cad Draft P/L
A-107 Demolition Plans Ground and First Floor	23.7.2021	Cad Draft P/L
A-109 Proposed Lower Rear and Ground Floor	23.7.2021	Cad Draft P/L
A-110 Proposed First Floor and Loft Level	23.7.2021	Cad Draft P/L
A-111 Proposed Site / Roof Plan	23.7.2021	Cad Draft P/L
A-112 North-East and South-West Elevations	23.7.2021	Cad Draft P/L

A-113 South-East Elevation	23.7.2021	Cad Draft P/L
A-114 North-West Elevation	23.7.2021	Cad Draft P/L
A-115 Section 1	23.7.2021	Cad Draft P/L
A-116 Section 2	23.7.2021	Cad Draft P/L
A-117 Sections 3, 4, 7 and 9	23.7..2021	Cad Draft P/L
A-118 Materials and Finishes	23.7.2021	Cad Draft P/L

Engineering Plans		
Drawing No.	Dated	Prepared By
20-8596-SW Rev B Proposed Stormwater Design Sheet 1	22.7.2021	Ross Engineers
20-8596-SW Rev B Proposed Stormwater Design Sheet 2	22.7.2021	Ross Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix Certificate A398290 02	22.7.2021	Chapman Environmental Services
Geotechnical Assessment AG 20300	25.11.2020	Ascent Geotechnical Consultants

- 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 / Erosion Management Plan		
Drawing No/Title.	Dated	Prepared By
A-120 Waste management Plan	23.7.2021	Cad Draft P/L

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	25.8.2021
Aboriginal heritage Office	Response AHO Referral	15.10.2021

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on

Council's website www.northernbeaches.nsw.gov.au)

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a single "dwelling house" where no other part of the house is to be used, adapted or so occupied as a separate domicile.

A **dwelling house** is defined as:

"a building containing only one dwelling."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$18,994.02 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,899,402.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. **Security Bond**

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

7. **On Slab Landscape Works**

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

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

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

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

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

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

8. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Compliance with Standards**

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

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

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

11. **Privacy Screening**

Landscape privacy screening on the front balcony is to be selected to ensure a natural mature height of plants to be 2.0m or less in order to minimise view impacts on adjacent land while providing privacy to the front living room area of the approved dwelling additions.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Pre-Construction Dilapidation Report**

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

- No.59 Undercliff Road
- No.55 Undercliff Road
- any other private property assets in close proximity to the works that may be affected.

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

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

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

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

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

13. **Construction and Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) shall be prepared by an RMS accredited person and submitted to and approved by the Principal Certifying Authority prior to the commencement of bulk / civil excavation works required.

The CTMP must address following as appropriate:

- The proposed phases of construction works on the site, and the expected duration of each construction phase, including methods of excavation, vibration minimisation and protocols to be implemented to advise surrounding residents of high noise (such as impact excavation, rock drilling, concrete pumping and the like during site works).
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken including dust suppression, site safety and noise minimization.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- Coordination of residential vehicle access with minimal inconvenience to adjacent land where access is shared within any right of carriageway during demolition and construction work.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking within driveway / garage slab / kerb side parking.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable TfNSW / RMS accreditation for any activities involving the management of vehicle and pedestrian safety traffic as appropriate.
- The proposed manner in which adjoining property owners will be kept advised of the

timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.

- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- Proposed protection for Council and adjoining properties from machinery / work damage.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”. A copy of the site CTMP is to be submitted to Council prior to issue of the Construction Certificate for record keeping purposes to assist with any related enquiries for the site.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. Protection of Rock and Sites of Significance

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

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

Reason: Preservation of significant environmental features.

15. Tree and Vegetation Protection

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

16. **Condition of Trees**

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

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

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

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

Reason: Protection of trees.

17. **Road Reserve**

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

Reason: Public safety.

18. **Survey Certificate**

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

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

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

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

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

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

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

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

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

20. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

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

21. Landscape Completion

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

- i) the indicative screen planting area is to comprise of native species capable of attaining a height on 2 metres at maturity. Suggested species include: *Acmena smithii* 'Minor', *Acmena smithii* 'Sublime' or *Syzygium* 'Cascade',
- ii) plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

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

Reason: Environmental amenity.

22. 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.

23. Removal of All Temporary Structures/Material and Construction Rubbish

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

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

Reason: To ensure bushland management. (DACPLF01)

24. House / Building Number

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

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

Reason: Proper identification of buildings.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**25. Landscape Maintenance**

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

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

with the approved Landscape Plan and any conditions of consent.

For all new on slab landscape works, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

26. **Undesirable Trees**

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

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

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

27. **Geotechnical Recommendations**

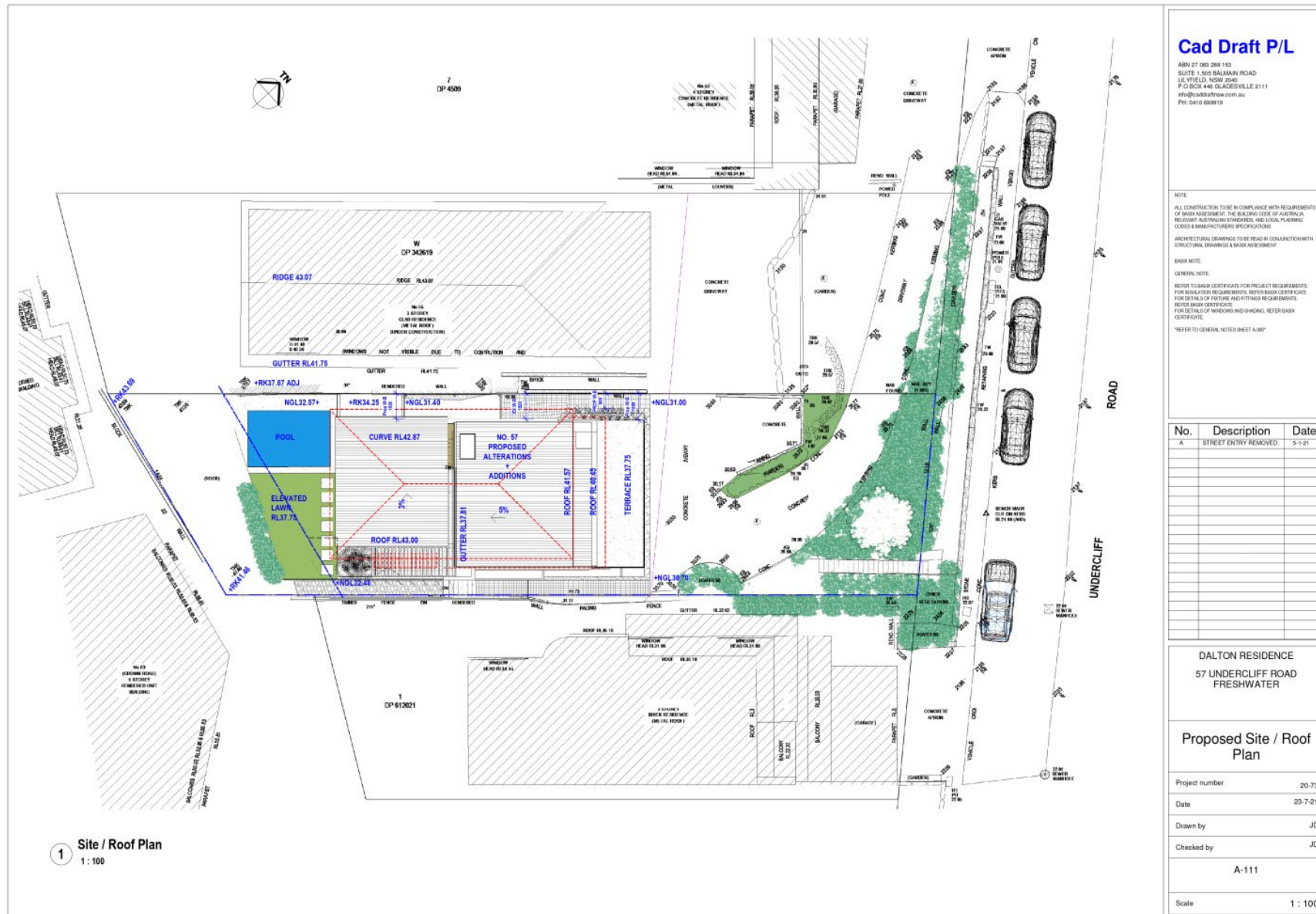
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

28. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.







ABN 27 063 268 153
SUITE 1, 505 BALMAIN ROAD
LILYFIELD, NSW 2040
P.O BOX 446 GLADESVILLE 2111
info@caddraftnow.com.au
PH: 0-810 695019

NOTE:
ALL CONSTRUCTION TO BE IN COMPLIANCE WITH REQUIREMENTS OF BASIC ASSESSMENT, THE BUILDING CODE OF AUSTRALIA, RELEVANT AUSTRALIAN STANDARDS, AND LOCAL PLANNING CODES & MANUFACTURERS SPECIFICATIONS
ARCHITECTURAL DRAWINGS TO BE READ IN CONJUNCTION WITH STRUCTURAL DRAWINGS & BASIC ASSESSMENT

REFER TO BASIX CERTIFICATE FOR PROJECT REQUIREMENTS.
FOR INSULATION REQUIREMENTS, REFER BASIX CERTIFICATE.
FOR DETAILS OF FIXTURE AND FITTINGS REQUIREMENTS,
REFER BASIX CERTIFICATE.
FOR DETAILS OF WINDOWS AND SKYLING, REFER BASIX
CERTIFICATE.

*REFER TO GENERAL NOTES SHEET A-100

[illegible]

DALTON RESIDENCE
57 UNDERCLIFF ROAD
FRESHWATER

South-East Elevation

Project number	20-72
Date	23-7-20
Drawn by	JL
Checked by	JL
A-113	
Scale	1 : 100

6/10/2021 11:37:20 AM



ABN 27 063 268 153
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PH: 0410 625919

NOTE:
ALL CONSTRUCTION TO BE IN COMPLIANCE WITH REQUIREMENTS OF BASIC ASSESSMENT, THE BUILDING CODE OF AUSTRALIA, RELEVANT AUSTRALIAN STANDARDS, AND LOCAL PLANNING CODES & MANUFACTURERS SPECIFICATIONS
ARCHITECTURAL DRAWINGS TO BE READ IN CONJUNCTION WITH STRUCTURAL DRAWINGS & BASIC ASSESSMENT

REFER TO BASIX CERTIFICATE FOR PROJECT REQUIREMENTS.
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FOR DETAILS OF FIXTURE AND FITTINGS REQUIREMENTS,
REFER BASIX CERTIFICATE.
FOR DETAILS OF WINDOWS AND SHADOWS, REFER BASIX
CERTIFICATE.

*REFER TO GENERAL NOTES SHEET A-100

[illegible]

DALTON RESIDENCE
57 UNDERCLIFF ROAD
FRESHWATER

North-West Elevation

Project number	20-7
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Date	23-7-2
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Drawn by	JL
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Checked by	

A-114

Scale 1 : 100

6/10/2021 11:37:23 AM



ABN 27 063 268 153
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NOTE:
ALL CONSTRUCTION TO BE IN COMPLIANCE WITH REQUIREMENTS OF BASIX ASSESSMENT, THE BUILDING CODE OF AUSTRALIA, RELEVANT AUSTRALIAN STANDARDS, AND LOCAL PLANNING CODES & MANUFACTURERS' SPECIFICATIONS
ARCHITECTURAL DRAWINGS TO BE READ IN CONJUNCTION WITH STRUCTURAL DRAWINGS & BASIX ASSESSMENT

REFER TO BASIX CERTIFICATE FOR PROJECT REQUIREMENTS.
FOR INSULATION REQUIREMENTS, REFER BASIX CERTIFICATE.
FOR DETAILS OF FIXTURE AND FITTINGS REQUIREMENTS,
REFER BASIX CERTIFICATE.
FOR DETAILS OF WINDOWS AND SHADOWS, REFER BASIX
CERTIFICATE.

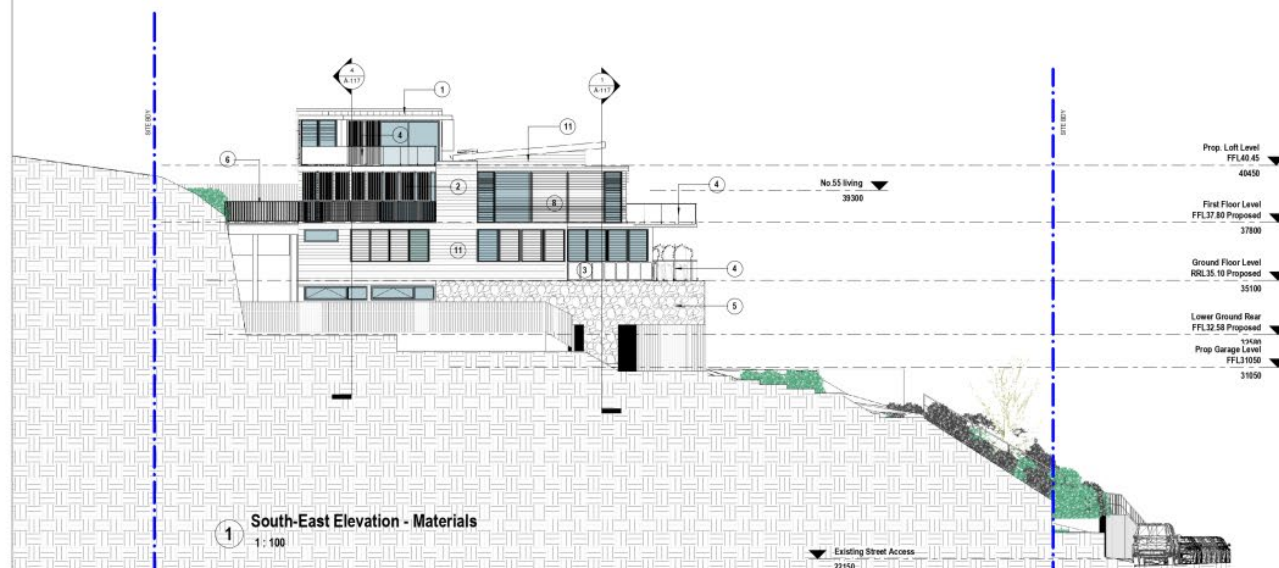
*REFER TO GENERAL NOTES SHEET A-100

[illegible]

DALTON RESIDENCE
57 UNDERCLIFF ROAD
FRESHWATER

Materials + Finishes

Project number	20-72
Date	23-7-20
Drawn by	JL
Checked by	JL
A-118	
Scale	1 : 100





03.08.2021

Clause 4.6 - Variation Request

Height of Building Development Standard (Clause 4.3 of Warringah LEP 2011)

57 Undercliff Road, Freshwater

1. Introduction

This Variation Statement has been prepared in support of a development application for the redevelopment of 57 Undercliff Road, Freshwater, and seeks to vary clause 4.3 of Warringah Local Environmental Plan 2011 (Warringah LEP 2011) in relation to the Height of Building control.

This Statement has been prepared in accordance with clause 4.6 – Exceptions to Development Standards of the Warringah LEP 2011, and the NSW Department of Planning and Infrastructure (DP&I) “Varying development standards: A Guide”, August 2011.

2. Development Standard to be varied

The development standard to be varied is clause 4.3 of Warringah LEP 2011 relating to Height of Building

Clause 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.*

(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) *If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.*

A 8.5 metre building height control applies to the site.

3. Proposed Development

The application seeks approval from Council to undertake the following:

- Alterations and additions to the existing detached dwelling, including a new floor level.
- Excavation to construct a new pedestrian entry pathway from Undercliff Road to the detached dwelling.
- New swimming pool within the rear yard.

4. Principles of Exceptions to Development Standards

Clause 4.6 provides a nexus to enable the flexibility of development standards where it is demonstrated that the proposed variation to a development standard may, in some circumstances, achieve the underlying purpose of the standard as much as one which complies. If the development is not only consistent with the underlying purpose of the standard, but also with the broader planning objectives for the locality, strict compliance with the standard can be deemed to be unreasonable and unnecessary and Council could approve an exception.

It is noted that the NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare clause 4.6 variations in the form of "Varying development standards: A Guide August 2011". This written request to vary the standard is based on the DP&I guide, in particular Appendix 3 which provides a template for and "Application Form to vary a development standard".

The following has been prepared in accordance with this Guide:

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

The Warringah Local Environmental Plan 2011 (Warringah LEP 2011)

4.2. What is the zoning of the land?

The land is zoned R2 – Low Density Residential under Warringah Local Environmental Plan 2011.

4.3. What are the Objectives of the zone?

The Objectives of the R2 Low Density Residential zone are:

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

4.4. What is the development standard being varied?

The development standard being varied is the Height of Building.

4.5. Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under clause 4.3 of the Warringah LEP 2011.

4.6. What are the Objectives of the development standard?

Clause 4.3 – Height of Building

(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.

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

The numeric value of the development standard is 8.5m in accordance with clause 4.3(2).

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

The new additions to the building achieve the following height:

Location	EGL	Proposed Height	Compliance
North-West Elevation (Front)	RL31.05	10.518m (RL41.568)	No
North-West Elevation (Rear)	RL34.45	8.65m (RL43.100)	No
South-East Elevation (Front)	RL31.375	10.19m (RL41.568)	No
South-East Elevation (Rear)	RL32.58	10.52m (RL43.10)	No

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

The percentage variation is 1.7% - 20%.

5. Proper application of Clause 4.6

Clause 4.6 of Warringah LEP 2011 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.
- 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:
 - (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) - 8) ...

Clause 4.6 has five requirements as follows:

1. There must be a written request from the applicant that seeks to justify the contravention of the standard (clause 4.6(3)).
2. That written request must seek to justify contravention of the standard by demonstrating that:
 - Compliance with the development standard is unreasonable or unnecessary in particular circumstances of the case (clause 4.6(3)(a)); and
 - That there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)).
3. The consent authority must consider the written request.
4. The consent authority must be satisfied that:
 - The written request as adequately addressed the matters that are required to be demonstrated, i.e. compliance is unreasonable and unnecessary and sufficient environmental planning grounds (clause 4.6(4)(a)(i)).
 - The development is 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 grounds (clause 4.6(4)(a)(ii)).
5. Concurrence to the variation must have been obtained from the Director-General grounds (clause 4.6(4)(b)).

It should be noted that steps 1 and 2 are matters for the applicant. Steps 3 and 4 are matters for the consent authority. Step 5 is a matter for the Director-General, however in this case the Director-General has issued a blanket concurrence to variations to development standards where the variation is made pursuant to an environmental planning instrument which contains clause 4.6 in the form contained in the standard template or in similar terms.

Assistance on the approach to justifying a development standard variation is found in certain defining decisions of the NSW Land and Environment Court, in particular the judgements for:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2FivePtyLtd v Ashfield Council* [2015] NSWLEC 1009
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386
- *Moskovich v Waverley Council* [2016] NSWLEC 1015
- *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179.

6. Assessment of the Proposed Variation under Clause 4.6

This Variation Request has been prepared against the following relevant Steps in reference to clause 4.6:

- Step 1 – The written request
- Step 2 – Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3))
- Step 3 – The proposed development will be in the public interest because it is consistent with the objectives of the development standard and objectives for development within the zone (clause 4.6(4))

STEP 1

6.1. Step 1 – The written Request

This document constitutes the written request to the application which seeks to justify contravention of the standard.

STEP 2

6.2. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a));

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified five ways that could be applied to establish whether compliance is unreasonable or unnecessary. These are discussed below:

1. *Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard*

As set out below, the proposed development will achieve the objectives of the standard notwithstanding numerical non-compliance.

The objectives of the Height of Building standard are set out in clause 4.3, and reproduced in Part 4.6 of this Variation.

(a) to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality,

The proposed development presents as a three storey form to its northern (front) elevation, consistent with 53, 55 and 61 Undercliff Road, and as further evident along the southern side of Undercliff Road due to the significant slope of the topography. The proposed loft level is setback significantly from the main building perimeter, and can not be seen from the street.

The desired future character of the streetscape contains many examples of three storey detached dwellings in a variety of architectural form. Undercliff Road is not identified as a

heritage streetscape, and the streetscape is in transition, and the architectural presentation of buildings is flexible in regard to modern forms, contemporary design and varied roofscapes, that adapt to the significant slope of the southern side of Undercliff Road.

The bulk and mass of the development will retain a detached building appearance consistent with the character of the Undercliff Road streetscape for the following reasons:

- The building will present as a 3 storey form, consistent with 53, 55 and 61 Undercliff Road, and as further evident along the southern side of Undercliff Road due to the significant slope of the topography
- The proposed loft level is setback significantly from the front wall of the main building perimeter and can not be seen when viewed by pedestrians at street level. The loft level does not alter the streetscape.
- The proposed loft level provides greater side setbacks than that required by council's controls, and is setback significantly from the side perimeter wall of the main building and can not be seen from the immediately adjoining properties – 55 and 61 Undercliff Road due to the significant setback.
- The proposed loft level achieves a height that is less than the habitable ground level of the immediately adjoining property to the rear (63 Crown Road), and therefore presents no visual bulk or scale upon these properties.
- The proposed loft level complies with the rear setback control.

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

In regard to visual impacts, as discussed under (a) above, the proposed loft level is setback significantly from the front wall of the main building perimeter and cannot be seen when viewed by pedestrians at street level. The loft level does not alter the streetscape and will not result in any visual impacts.

In regard to views, as shown on the submitted Site Analysis Plan, the views enjoyed 53-55 Undercliff and the Crown Street properties are contained within the front and rear setback areas of the site. The proposed additions do not contribute to any loss of significant views enjoyed from the public realm or from adjoining properties.

In regard to privacy, the proposal will improve privacy to 55 Undercliff Road through the replacement of windows along the side boundary with highlight windows, and to 61 Undercliff Road through the removal of the open 'entertainer' balcony along the side boundary. The proposed loft level balcony contains a perimeter privacy planter that prevents downward overlooking into the private areas of 61 Undercliff Road.

The new loft addition has no window openings facing 63 Crown Road. The new rear window openings at first floor level have an outlook upon the rear boundary rock outcrop, and there are no direct views into the balconies /windows of 63 Crown Road (which are positioned >5m higher up the slope)

In regard to solar access, the primary private open space areas of 55 and 61 Undercliff Road are the northern balconies located directly off the living areas, and no change is proposed the solar access received to these private open space areas.

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

The scenic qualities of the coastal environment is best established through a consistent undulating skyline appearance of the urban form that relates to the topography of the land.

The proposed new loft level is located to the rear of the building and is positioned to be appropriately stepped in urban form between 55 Undercliff Road and 63 Crown Road.

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

In regard to visual impacts, as discussed under (a) above, the proposed loft level is setback significantly from the front wall of the main building perimeter and cannot be seen when viewed by pedestrians at street level. The loft level does not alter the streetscape and will not result in any visual impacts. The site is also of a significant distance from the nearest park that the loft level will not be noticeable.

2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

This contention is not applicable to the proposal.

3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

This contention is not applicable to the proposal.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

Council has a well-established and consistent approach to consenting to variations of the height control for significant sloping sites (as evident by the Clause 4.6 Variations Register for 2019 – 2020).

5. *"the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

This contention is not applicable to the proposal.

6.3. Is there sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)).

Yes. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard being:

- A development is a permissible use under the R2 Zoning, and the proposed development remains consistent with the relevant objectives for development in Zone R2.
- The bulk and mass of the development will retain a detached building appearance consistent with the character of the Undercliff Road streetscape.
- The existing height and urban character of development along the southern side of Undercliff Road is 3 storey in form due to the significant slope of the topography. The proposed height is consistent with this urban character of the streetscape.
- The building will present as a form and height that is consistent with the row of dwellings - 53, 55 and 61 Undercliff Road (as recently approved by Council).
- The loft level would have complied with the building height if measured from the original topography of the land, prior to the excavation of the site to construct the existing house (Refer to 1984 DA Consent), and this is consistent with *Batter v Council of Sydney* [2014] NSWLEC 1070.
- The proposed loft level is setback significantly from the front wall of the main building perimeter and cannot be seen when viewed by pedestrians at street level. The loft level does not alter the streetscape.
- The proposed loft level provides greater side setbacks than that required by council's controls, it is setback significantly from the side perimeter wall of the main building and cannot be seen from the immediately adjoining properties – 55 and 61 Undercliff Road due to the significant setback.
- The proposed loft level achieves a height that is less than the habitable ground level of the immediately adjoining property to the rear (63 Crown Road), and therefore presents no visual bulk or scale upon these properties.
- The proposed loft level complies with the rear setback control.
- The proposed additions ensure equitable view sharing is maintained between properties. As shown on Drawing A-110 and A-141, the proposed additions do not contribute to any additional loss of primary views enjoyed from 53-55 Undercliff Road and the Crown Street properties.
- As further demonstrated within this report, the proposal will improve privacy at the lower levels of the buildings, and the proposed loft that exceeds the height control will not result in any overlooking impacts upon adjoining properties.
- The proposed exceedance of the height control will retain a dwelling within a landscaped setting as required by the zone objectives and will not alter the balance between landscaping and built form.

- The proposal improves the open space areas of the site to provide for improved outdoor recreational opportunities for the occupants of the building with better connection with the internal living room areas.
- The proposal improves the internal amenity of the occupants of the building through greater solar access to the living areas of the building.
- The proposed additions do not contribute to any loss of significant views enjoyed from the public realm or from adjoining properties.
- Council has a well-established and consistent approach to consenting to variations of the height control for significant sloping sites (as evident by the Clause 4.6 Variations Register for 2019 – 2020).

For the reasons set out above, the proposal will achieve a better planning outcome than a compliant development of the site.

STEP 3

6.4. Will the proposed development be in the public interest because it is consistent with the objectives of the development standard?

The objectives of development standard are:

Clause 4.3 – Height of Building

(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.

An assessment against these objectives is provided in Section 6.2.

Even though the proposal results in a non-compliance with the development standard, as demonstrated above, the proposal is considered consistent with the objectives of the development standard, and is in the public interest.

6.5. Will the proposed development be in the public interest because it is consistent with the objectives of the zone?

The Objectives of the R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

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

The proposal is consistent with the zone objectives for the following reasons:

- In regard to dot point 1, the proposal will result in a dwelling that improves the internal amenity for the occupants in terms of providing better solar access and better connection to outdoor recreation areas. The proposal will retain a single dwelling, and this will retain the low density residential environment of the street and the local area.
- Dot points 2 is not applicable to the proposal.
- In regard to dot point 3, the proposal will retain the existing landscaped setting of the site established by the front and rear setback zones of the site. The site currently has no landscaped setting along the side boundaries, consistent with other properties along the street.

7. Conclusion

It is requested that council supports the proposed variation to Clause 4.3 of Warringah LEP 2011 for the following reasons:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
2. There are sufficient environmental planning grounds to justify contravening the development standard.
3. The proposed development is the logical provision of built form across the site and surrounding locality.
4. No unreasonable environmental impacts are introduced as a result of the proposal.
5. There is no public benefit in maintaining strict compliance with the standards.
6. The proposed development is in the public interest.

Given the above justification provided above this Clause 4.6 Variation is well founded and should be favourably considered by Council.

ITEM 3.4**DA2021/1059 - 56 PERONNE AVENUE, CLONTARF -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
AND SECONDARY DWELLING INCLUDING THE
CONSTRUCTION OF A SWIMMING POOL AND ASSOCIATED
LANDSCAPE WORKS**

REPORTING MANAGER	Rebecca Englund
TRIM FILE REF	2021/798404
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations 3 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 MLEP 2013 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 DA2021/1059 for Alterations and additions to a dwelling house and secondary dwelling including the construction of a swimming pool and associated landscape works on land at Lot 13 DP 29355, 56 Peronne Avenue, Clontarf, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1059
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 13 DP 29355, 56 Peronne Avenue CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house and family flat, including the construction of a swimming pool and associated landscape works
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Nicole Rosalie Adamo
Applicant:	Minto Planning Services Pty Ltd
Application Lodged:	12/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/07/2021 to 02/08/2021
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 22.47%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,500,000.00

EXECUTIVE SUMMARY

The application seeks consent for alterations and additions to the existing dwelling house and family flat.

The pitched roof of the existing dwelling has a maximum height of approximately 10.26m (20.7% variation). The proposed new roof form results in a marginally increased building height of 10.41m, representing a variation of 22.47% to the building height development standard. Despite the proposed breach, the new roof design lowers the ridge height of the dwelling by 510mm.

The dwelling additions are contained below the existing roof ridge level and do not result in any



unreasonable building 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. As the development standard variation exceeds 10% and the proposal relates to a Class 1 building, the application is referred to the Development Determination Panel for determination.

The existing 131.4m² family flat exceeds the maximum GFA of 84.6m² permitted for secondary dwellings by MLEP Clause 5.4. However, this limitation is not considered to be applicable in relation to the existing development, which was approved under a previous environmental planning instrument. Further discussion of this matter is included under Clause 5.4 of this report.

Three submissions were received in response to the notification of the application, generally relating to privacy and construction impacts. As detailed in the report, none of the concerns raised in submissions warrant the refusal of the application.

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 proposal seeks consent for alterations and additions to the existing dwelling and family flat/secondary dwelling as follows:

Garage

- New garage doors
- New green roof to existing garage
- New timber screen and pergola over entry stair
- Demolish internal wall

Lower ground floor

- New dwelling entry and awning roof
- New internal lift
- New front terrace with vertical planter
- Additions and internal reconfiguration to provide entry, living, beds 4 & 5, bathroom & laundry

Ground floor

- Demolish existing front balcony and construct new terrace and planters
- New privacy screen and operable louvre roof to terrace
- Additions and internal reconfiguration to provide kitchen, living, dining & WC

First floor

- Reconstruct existing front terrace with blade wall screens and planters
- Internal reconfiguration to provide bed 1 with ensuite and robe, beds 2 & 3, bathroom & linen

Secondary dwelling



- Demolish existing lower bedroom and construct open bridge link and external stair
- Demolish and replace existing deck adjacent to proposed swimming pool
- Demolish and replace internal stair

External

- Demolish existing hipped dwelling roof and construct new skillion roof
- Changes to doors and windows
- New materials and finishes
- New swimming pool with end wall
- Demolish and replace path and stair adjacent to south-eastern side boundary
- New south-east boundary wall adjacent to lower ground floor
- New inclinator stop at rear of ground floor
- New landscaping to south-eastern boundary and pool surrounds

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 5.4 Controls relating to miscellaneous permissible uses
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)



Manly Development Control Plan - 4.1.8 Development on Sloping Sites
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 13 DP 29355 , 56 Peronne Avenue CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the north-eastern side of Peronne Avenue. The site is irregular in shape with a frontage of 11.62m along Peronne Avenue and a maximum depth of 58m. The site has a surveyed area of 988m². The site is located within the R2 Low Density Residential zone and accommodates an existing three-storey dwelling with an attached secondary dwelling and a detached garage at the front boundary. The site slopes 23.42m from rear (north-east) to front (south-west). The site contains 21 significant trees, generally located within the heavily vegetated rear and southern side setbacks. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by multi-storey detached dwellings.

Map:





SITE HISTORY

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

- DA4036/1991 for Proposed alterations - Approved 10 July 1991.
- DA5043/1991 for Modification of the determination of Development Application No. 4036/91 - Approved 11 March 1992.
- DA0492/1996 - Part 1 for Alterations and additions to rear of existing dwelling - Approved 18 August 1997.
- DA0633/1999 for Creation of family flat within existing dwelling - Approved 14 March 2000.
- DA0188/2000 for Replace existing roof - Approved 5 June 2000
- DA0350/2001 - Part 1 for Erection of pergola - Approved 9 October 2001.
- DA0350/2001 - Part 2 for Erection of pergola - Approved 3 February 2003.
- DA0492/1996 - Part 4 for Alterations and additions to existing dwelling - Approved 9 May 2005.
- DA0052/2006 for Alterations to the existing space under the house to create a bathroom within the existing walls - Approved 27 April 2006.
- DA0247/2014 for Alterations and additions to an existing secondary dwelling including new sunroom, pergola to courtyard, new windows and doors - Approved 18 March 2015. Despite the approval of DA0247/2014, Council's records do not include any evidence of a Construction Certificate being issued and a physical inspection of the site indicates that the works never commenced.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment	<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

Section 4.15 Matters for Consideration	Comments
Regulation 2000 (EP&A Regulation 2000)	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. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <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. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <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. <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. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.



Section 4.15 Matters for Consideration	Comments
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

See Clause 5.4 discussion.

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 19/07/2021 to 02/08/2021 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 process council is in receipt of 3 submission/s from:

Name:	Address:
Mrs Husniye Yavuz	54 Peronne Avenue CLONTARF NSW 2093
Mr Manfred Fahr Miss Carla Gail Heindl Sabiene Heindl	2 A Russell Street CLONTARF NSW 2093
Mr Ajoy Ghosh Ms Maryam Zoljalali	41 Peronne Avenue CLONTARF NSW 2093

The matters raised within the submissions are addressed as follows:

- Privacy concerns**

Comment: Concerns were raised in relation to the visual and acoustic privacy impacts to 54 Peronne Avenue resulting from the proposed lift, south-eastern entry door and external bridge link to the secondary dwelling. Concerns were also raised in relation to the privacy impacts to 2A Russel Street resulting from the proposed ground and first floor terraces, swimming pool and new inclinator stop.

The proposed lift entry is located a level lower (2.8m) than the existing front door and the new south-eastern entry door incorporates an awning roof, timber batten, vegetation screening and a new boundary wall. Further, the proposed lift and door are access points to the dwelling with a lower frequency of use in comparison to living areas, and are not considered to result in adverse privacy impacts. The proposal includes sufficient detail in relation to the first floor terrace privacy screening, and the combination of the louvre screening, planter box and increased separation to the trafficable terrace area are considered to provide a suitable privacy outcome. Given the elevation of the bridge link between the primary and secondary dwelling, a condition is imposed requiring the provision of a privacy screen to the south-eastern elevation. A further condition is imposed to ensure that the operation of the lift, swimming pool equipment and any



other mechanical equipment does not give rise to unreasonable noise impacts.

The proposed ground and first floor terraces are considered to be appropriately designed to maintain privacy to 2A Russel Street. The existing ground floor terrace extends across the full width of the dwelling to the north-western boundary, while the proposed terrace maintains a minimum setback of 6m and incorporates a non-trafficable planter beyond. The existing first floor terrace is demolished and reconstructed in the existing position, with a blade wall and non-trafficable planter to the north-western boundary. The applicant indicates that a high boundary fence can be provided adjacent to the proposed swimming pool and inclinor stop as requested, however this is not included in the application and is a civil matter between the adjoining owners.

- **Traffic impacts during construction**

Comment: A condition is imposed requiring the preparation of a Construction Traffic Management Plan (CTMP) for approval by Council.

- **Lift compliance with relevant standards and implementation of dust suppression measures during construction**

Comment: A standard condition is imposed to ensure that all aspects of the development comply with the relevant Australian standards.

- **Preparation of dilapidation reports for adjoining properties**

Comment: Conditions are imposed requiring the preparation of pre and post-construction dilapidation reports to identify any damage to adjoining properties as a result of the works.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported with conditions. This application is for the alterations and additions to an existing residential dwelling. Proposed works include the demolition of the primary residence and construction of a new residential dwelling. An existing secondary dwelling is located towards the rear of the site and is proposed to be largely retained, with minor alterations to the lower level. A swimming pool is also proposed towards the rear of the site. Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls: • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping The Statement of Environmental Effects provided with the application notes that the proposal does not involve the removal of any significant trees, and that proposed works are not expected to have any unreasonable tree impacts. This statement is largely supported by the Architectural Plans provided as it is clear the proposed works are

Internal Referral Body	Comments
	mostly confined to the existing dwelling footprint, with minor impacts on existing significant trees. A Landscape Plan is provided with the application which proposes both the in-ground and on-slab planting of trees, shrubs, accents, grasses as well as groundcovers. Slight concern is raised regarding the potential impacts of works on the lower ground floor of the secondary dwelling. On plan, this area is located within the Tree Protection Zone (TPZ) of the significant native tree located towards the north of the secondary dwelling, as well as existing trees to the south of this secondary dwelling. As no Arboricultural Impact Assessment has been provided with the application, the impacts of proposed works are not fully understood. As works are largely located within the existing footprint, the expected impacts are to be minimal, however to ensure existing significant trees are retained, it is recommended that a Project Arborist be appointed to supervise all works with the Tree Protection Zone (TPZ) and Structural Root Zone (SRZ) of existing trees retained. The Project Arborist is to ensure no significant roots are impacted by proposed works, as any negative impact to both the short-term and long-term health of these trees would not be supported. The retention of these significant trees is vital to satisfy control 3.3.2, as key objectives of this control include "to protect and enhance the urban forest of the Northern Beaches", "to effectively manage the risks that come with an established urban forest through professional management of trees", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". The completion of landscape works as proposed on the landscape works are also necessary to satisfy both controls 3.3.1 and 4.1.5, as key objectives of these controls include "to encourage appropriate tree planting and maintenance of existing vegetation", "to maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland", as well as "to maintain amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area". The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape Plans.
NECC (Development Engineering)	Supported with conditions. No objections to approval subject to conditions as recommended.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are



External Referral Body	Comments
	recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A413864_02 dated 1 June 2021).

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:



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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.41m	22.47%	No
Floor Space Ratio	0.4:1 395.2m ²	0.4:1 394.8m ²	-	Yes
Secondary Dwelling GFA	60m ² , or 30% of total floor area of the principal dwelling (84.6m ²)	112.8m ²	33.3%	No (see Clause 5.4 discussion)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.41m



Percentage variation to requirement:	22.47%
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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 proposal is for the carrying out of alterations and additions to the existing building and which currently has a building height of 10.26m and which exceeds the Council's maximum building height control of 8.5m.*
- *The non-compliance results from the sites steep topography together with the height of the existing floor levels.*
- *The proposed alterations and additions include a new roof to the existing dwelling. The proposal whilst technically resulting in an increased building height by definition results in a reduction in the effective building height via a 510mm reduction in the ridge level.*
- *The additional building height over the 8.5m maximum building height is largely a result of the proposed privacy screening to the existing balcony.*
- *The proposed dwelling alterations and additions are of a design which is in keeping with the character of the locality and will make a positive contribution to the existing streetscape.*
- *The proposal will not result in any additional negative impacts on the privacy or amenity of the adjoining properties to the north west and south east.*
- *The proposal will not result in any view loss impacts upon the adjoining properties.*
- *Is the proposed development 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:

The proposed variation occurs due to the proposed new skillion roof design over the existing dwelling that already exceeds the building height control. The overall height of the dwelling is increased by a maximum of 150mm, while the ridge height of the roof is reduced by 510mm. Despite the increased height of the dwelling, the proposal is considered to reduce the bulk of the roof form above the 8.5m height plane and maintain a reasonable level of amenity to adjoining properties and the public domain. Figure 1 below illustrates the building height non-compliance and redistribution of bulk resulting from the proposed skillion roof (grey) in comparison to the existing hipped roof (white).

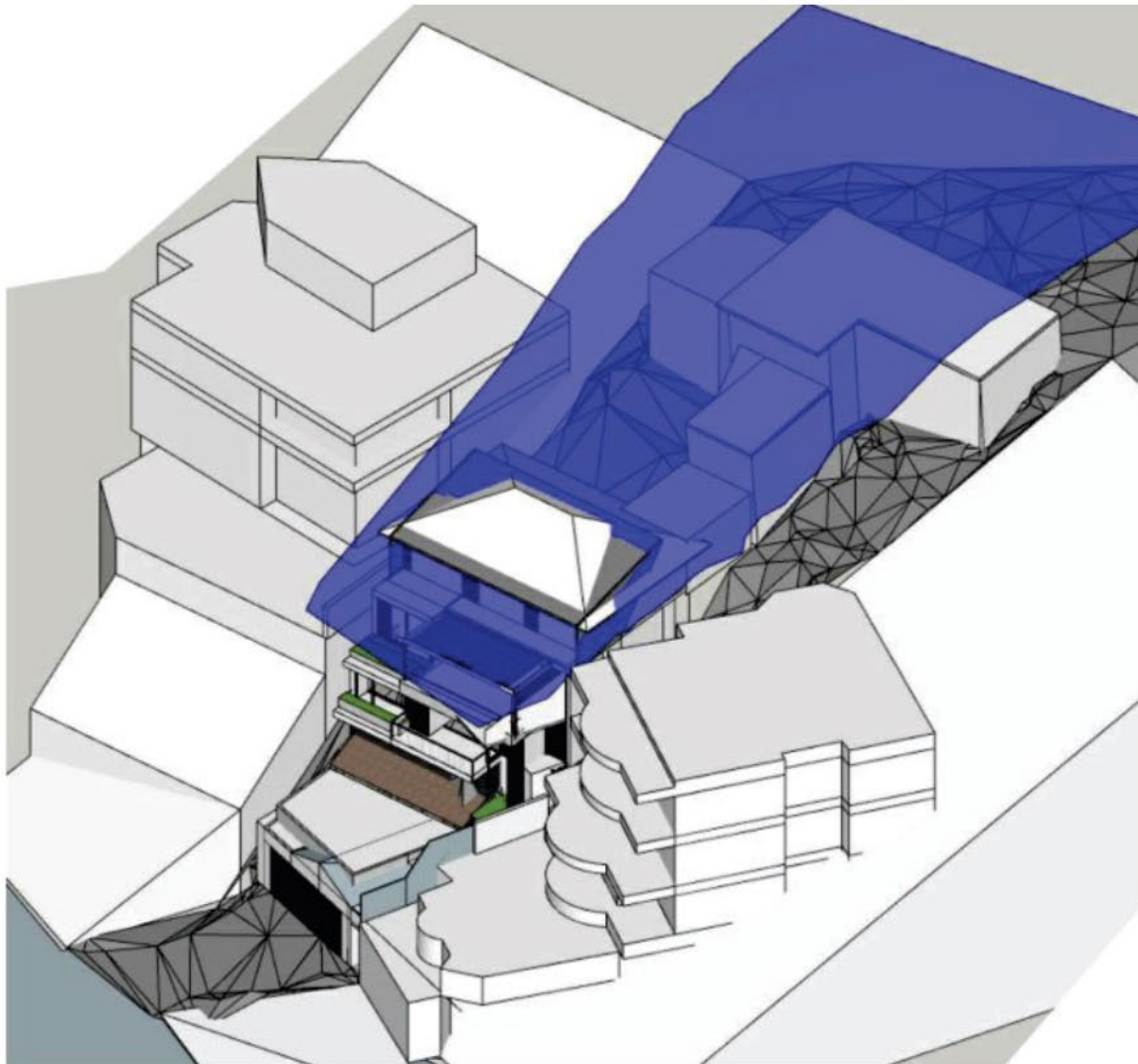


Figure 1. Height non-compliance of existing and proposed roof forms.

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, 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 MLEP 2013 are:

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

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

Comment:

The proposed development provides a building height and roof form that is consistent with the topography, prevailing building height and desired streetscape within the locality.

b) to control the bulk and scale of buildings,

Comment:

The proposal is not considered to be excessive in bulk or scale notwithstanding the minor increase to the existing height breach.

c) to minimise disruption to the following:

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

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

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

Comment:

The proposal will not unreasonably impact views to or from surrounding developments and public spaces.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposal will maintain a compliant level of solar access to adjoining properties and nearby public spaces.



e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

N/A

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 retains the existing low density residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

N/A

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

5.4 Controls relating to miscellaneous permissible uses

Clause 5.4(9) specifies that the total floor area of a secondary dwelling must not exceed 60m² or 30% of the total floor area of the principal dwelling, whichever is greater. In order to comply with this control, a secondary dwelling at the subject site would need to be limited to a maximum GFA of 84.6m².

The existing second dwelling was originally approved through DA0633/1999 as a 'family flat', with a



GFA of 123.6m². Section 2.6 Family Flats of the *Manly Development Control Plan for the Residential Zone 1986* allowed for the conversion of a dwelling house into two dwellings, but did not include any restrictions on the floor area of the resulting family flat. Subsequent alterations and additions to the family flat approved through DA0052/2006 resulted in the current approved GFA of 131.4m².

The imposition of MLEP in 2013, which now includes a restriction on the size of secondary dwellings, acts to prohibit secondary dwellings of the size approved on the site and proposed to be modified. As the family flat was not subject to a maximum floor area control at the time of approval, it is considered that existing use rights apply and that the family flat/secondary dwelling can be maintained.

Further, while the proposed GFA is non-compliant with the provisions of Clause 5.4(9), the proposal results in an overall reduction of 18.6m² to the existing floor area. Based on the existing use rights benefiting the development and the reduction in the floor area of the family flat, the proposal is acceptable on merit despite the technical non-compliance.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 988m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	NW: 8m	GF planter: 5.58m	N/A	Yes
		GF wall: 2.7m - 7.3m	N/A	Yes
		FF: 5.5m - 9.3m	16.25%	No
	SE: 8m	LGF terrace: 5.6m	N/A	Yes
		LGF wall: 5.3m	N/A	Yes
		GF terrace: 9m	12.5%	No
		GF lift & wall: 3.6m - 8m	N/A	Yes
		FF: 6.4m - 10.3m	28.75%	No
4.1.2.2 Number of Storeys	2	3	50%	No (existing)
4.1.2.3 Roof Height	Height: 2.5m	1.3m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Garage: 0m	100%	No (existing)
		Dwelling: 6m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	NW (GF planter): 1.86m	1.87m	N/A	Yes
	NW (GF wall): 0.9m - 2.43m	1.6m - 1.8m	26%	No
	NW (FF): 1.83m - 3.1m	1.6m - 1.8m	42%	No
	SE (LGF terrace): 1.87m	3.13m	N/A	Yes
	SE (LGF wall): 1.77m	2.3m	N/A	Yes

	SE (GF terrace): 3m	1.14m	62%	No
	SE (GF lift & wall): 1.2m - 2.67m	1.17m - 4.2m	56.2%	No (existing)
	SE (FF): 2.1m - 3.4m	1.6m - 4.2m	53%	No
4.1.4.4 Rear Setbacks	8m	6.7m	N/A	No (existing)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area 592.8m ²	68.2% 673.7m ²	N/A	Yes
	Open space above ground 25% of total open space	4.6%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 267.48m ²	55.5% 373.6m ²	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	7.7m	N/A	No (existing)
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.6m - 3m	170%	No
	1m curtilage side/rear setback (2.7m)	1.6m	40.7%	No
	1.5m water side/rear setback (2.7m)	1.9m	29.6%	No
Schedule 3 Parking and Access	3 spaces	3 spaces	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Storeys & Roof Height)		
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposal retains the existing garage location and setbacks and includes a new green roof to soften the visual bulk of the structure. The proposal also includes new additions to the front of the existing dwelling that will provide increased facade articulation and improve the overall appearance of the development within the streetscape. The development maintains an appropriate relationship with surrounding developments and the existing streetscape in accordance with this control.

3.4.1 Sunlight Access and Overshadowing

Compliance with control

The proposal includes various minor increases and reductions to bulk at the south-eastern elevation of the development. The proposal will result in minor additional overshadowing of the pool area and lower terrace of 54 Peronne Avenue at 12pm. There is no additional impact to No. 54 at 9am and a reduction to overshadowing of the lower terrace at 3pm.

The proposal maintains a compliant level of sunlight access to adjoining properties throughout the day in accordance with the control.

3.4.2 Privacy and Security

Compliance with control

The proposal, as conditioned, will maintain a reasonable level of privacy to the subject site and adjoining properties. The proposed front terraces incorporate a variety of privacy measures including louvre screening, planter boxes and vertical 'green screens', and are not anticipated to result in any unreasonable privacy impacts in comparison to the existing development. Several window openings at the upper levels are in-filled while the proposed new windows and doors to the side elevations are located at the lower ground floor and will not give rise to any adverse privacy impacts.

Due to the potential overlooking opportunities arising from the proposed elevated and unenclosed external bridge link between the primary and secondary dwellings, a condition is imposed requiring the



provision of a privacy screen to the south-eastern elevation of this structure.

Further detailed discussion of specific privacy concerns raised in the submissions is included under the Submissions section of this report.

3.4.3 Maintenance of Views

The proposal results in an overall reduction to the ridge height of the dwelling and is not anticipated to cause any unreasonable view impacts.

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

Description of non-compliance

The proposed additions and new skillion roof form will result in increased wall heights at the north-western and south-eastern elevations. The north-western wall height is increased by 0.8m to a maximum of 9.3m, which exceeds the 8m control. At the south-eastern elevation, the ground floor terrace wall height is increased by 1.5m to a maximum of 9m and the first floor wall height is increased by 1.2m to a maximum of 10.3m.

Merit consideration

With regard to the consideration for a variation, the development is considered against the LEP objectives for Clause 4.3 Height of Buildings:

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

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

Comment:

The proposed wall and building heights remain compatible with the prevailing building heights of the locality and the new roof form improves the consistency of the dwelling with the steep topography of the site.

b) to control the bulk and scale of buildings,

Comment:

The proposed additions improve the articulation of the dwelling and are of an appropriate bulk and scale in relation to the site area.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposal will not result in any unreasonable view impacts to, from or between residential development and public spaces.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to



private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The overshadowing impacts arising from the development are minimal and compliance with the solar access control is maintained.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

N/A

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

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

Description of non-compliance

The development includes various existing and proposed setback non-compliances. Given that the proposal is for alterations and additions, the below assessment of setback non-compliances is limited to new works and does not include consideration of existing/unchanged breaches.

The 1.6m north-western side setback to the ground and first floor additions to the front of the dwelling is non-compliant with the 1/3 wall height control.

At the south-eastern elevation the 1.14m setback to the ground floor terrace is non-compliant with the 3m requirement and the minimum 1.6m setback at the front of the first floor is non-compliant with the 3.4m requirement. The proposed ground floor terrace provides improved separation from the south-eastern boundary and the planter box increases the setback to the trafficable area of the terrace in comparison to the existing situation. The first floor south-eastern setback remains unchanged but the wall height is increased as a result of the new roof design, increasing the setback requirement and creating a technical non-compliance.

It is noted that the garage front setback remains unchanged and the first floor terrace is demolished and reconstructed as existing.

Merit consideration:

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

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

Comment:

The proposed development will maintain and enhance the existing streetscape through improved facade articulation and the new landscaped roof above the garage.



Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal will not result in any unreasonable impacts in relation to privacy, solar access, privacy, views, streetscape character or traffic conditions.

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

Comment:

The proposed setback non-compliances are considered to be acceptable on merit.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal maintains deep soil areas of sufficient dimensions and includes new planting across the site to achieve consistency with this objective.

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

Comment:

N/A

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The non-compliance with the maximum garage width is existing and remains unchanged. The proposal includes refurbishment of the garage and will improve the appearance of the structure within the



streetscape.

4.1.8 Development on Sloping Sites

The site is mapped as Landslip Hazard Areas G1 and G2. A Geotechnical Investigation has been prepared in relation to the proposed development, the recommendations of which are incorporated into the conditions of consent.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9.1 requires that:

- a) Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:*
- i) would not detract from the amenity or character of the neighbourhood; and*
 - ii) is a minimum distance from any side boundary equivalent to the height of the swimming pool*

The proposed swimming pool reaches a maximum height of 3m above ground level, which is non-compliant with the 1m control. The swimming pool has minimum north-western boundary setback of 1.6m to the curtilage and 1.9m to the water edge, resulting in a non-compliance with the 3m setback requirement.

Merit consideration

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

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

Comment:

The proposed pool design includes a 1.2m high solid end wall to the north-western boundary and does not propose any new decking within the side setback. Additional landscape screening is provided to the front of the pool.

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

Comment:

The proposed pool is appropriately located at the rear of the primary dwelling to avoid any adverse impacts to the streetscape or character of the locality.

Objective 3) To integrate landscaping; and

Comment:

New planting is proposed to screen the front wall of the pool.



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

Comment:

N/A - The subject site is not mapped as bush fire prone land.

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

4.4.5 Earthworks (Excavation and Filling)

The proposal includes minor excavation works to accommodate the new lift and swimming pool. The excavation is limited to a maximum depth of 1.5m and is suitably located to minimise impacts to the natural environment and surrounding 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

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

A monetary contribution of \$15,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,500,000.

CONCLUSION

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

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

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

In consideration of the proposal and the merit consideration of the development, the proposal is



considered to be:

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 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 application seeks consent for alterations and additions to the existing dwelling and secondary dwelling.

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

Notwithstanding the proposed building height variation of 22.47%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

Three submissions were received in relation to the development, and are addressed within the report with suitable conditions imposed where necessary.

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/1059 for Alterations and additions to a dwelling house and family flat, including the construction of a swimming pool and associated landscape works on land at Lot 13 DP 29355, 56 Peronne Avenue, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 Site and Roof Plan	Issue A, 28 May 2021	Michael Cumming Architect
DA10 Lower Ground Floor	Issue A, 28 May 2021	Michael Cumming Architect
DA11 Ground Floor	Issue B, 2 August 2021	Michael Cumming Architect
DA12 First Floor	Issue A, 28 May 2021	Michael Cumming Architect
DA13 Secondary Dwelling Upper Plan	Issue A, 28 May 2021	Michael Cumming Architect
DA15 Roof Plan	Issue A, 28 May 2021	Michael Cumming Architect
DA20 North West Elevation	Issue A, 28 May 2021	Michael Cumming Architect
DA21 South East Elevation	Issue B, 2 August 2021	Michael Cumming Architect
DA22 Front Elevation	Issue A, 28 May 2021	Michael Cumming Architect
DA23 Rear Elevation	Issue A, 28 May 2021	Michael Cumming Architect
DA25 Section A	Issue B, 2 August 2021	Michael Cumming Architect

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A413864_02	1 June 2021	Michael Cumming
Geotechnical Investigation	2 July 2021	White Geotechnical Group

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
1 Lower GF Plan	2 June 2021	Paul Scrivener Landscape
2 First Floor Plan	24 May 2021	Paul Scrivener Landscape
3 Ground Floor Plan	24 May 2021	Paul Scrivener Landscape
4 Site Analysis Plan	24 May 2021	Paul Scrivener Landscape

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$15,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$1,500,000.00.

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 \$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. On Slab Landscape Works

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

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

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

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

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

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

7. Stormwater Disposal

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



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

8. **Amendments to the approved plans**

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

- A privacy screen shall be provided to the south-eastern elevation of the external bridge link between the primary and secondary dwellings. The screen is to be a minimum height of 1.8m measured above the FFL of the bridge link, with a maximum transparency of 30%.

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

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

9. **Boundary Identification Survey**

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

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

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

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

10. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

11. **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.

12. **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.

13. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Truck movements must be agreed with Council's Traffic Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Seven (7) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the



surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site

- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

14. **Geotechnical Recommendations**

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Project Arborist**

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

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

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



All tree protection measures specified must:

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

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

Note:

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

Reason: Tree protection.

16. **Pre-Construction Dilapidation Report**

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

Property / Properties:

- o 54 Peronne Avenue, Clontarf
- o 2A 2A Russell Street, Clontarf

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **Tree and Vegetation Protection**

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



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

b) Tree protection shall be undertaken as follows:

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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

18. Road Reserve



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

Reason: Public safety.

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

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

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

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

20. **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.

21. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

22. **Implementation of Geotechnical Recommendations**

All recommendations included in the Geotechnical Report referenced in Condition 1 of this consent are to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

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



23. **Landscape Completion**

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

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

Reason: Environmental amenity.

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

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

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

Reason: Tree protection.

25. **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. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

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

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

27. **Certification of Geotechnical Recommendations**

Certification from a suitably qualified and practicing Geotechnical Engineer that all recommendations included in the Geotechnical Report referenced in Condition 1 of this consent have been incorporated into the development shall be provided to the Principal Certifying Authority prior to the issue of a Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES****28. Landscape Maintenance**

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

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

For all new on-slab landscape works, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

29. Mechanical Plant

Noise associated with the ongoing operation of the lift motor, pool pump and any other mechanical equipment is not exceed 5dBa above background noise level within habitable rooms of the surrounding residential properties.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

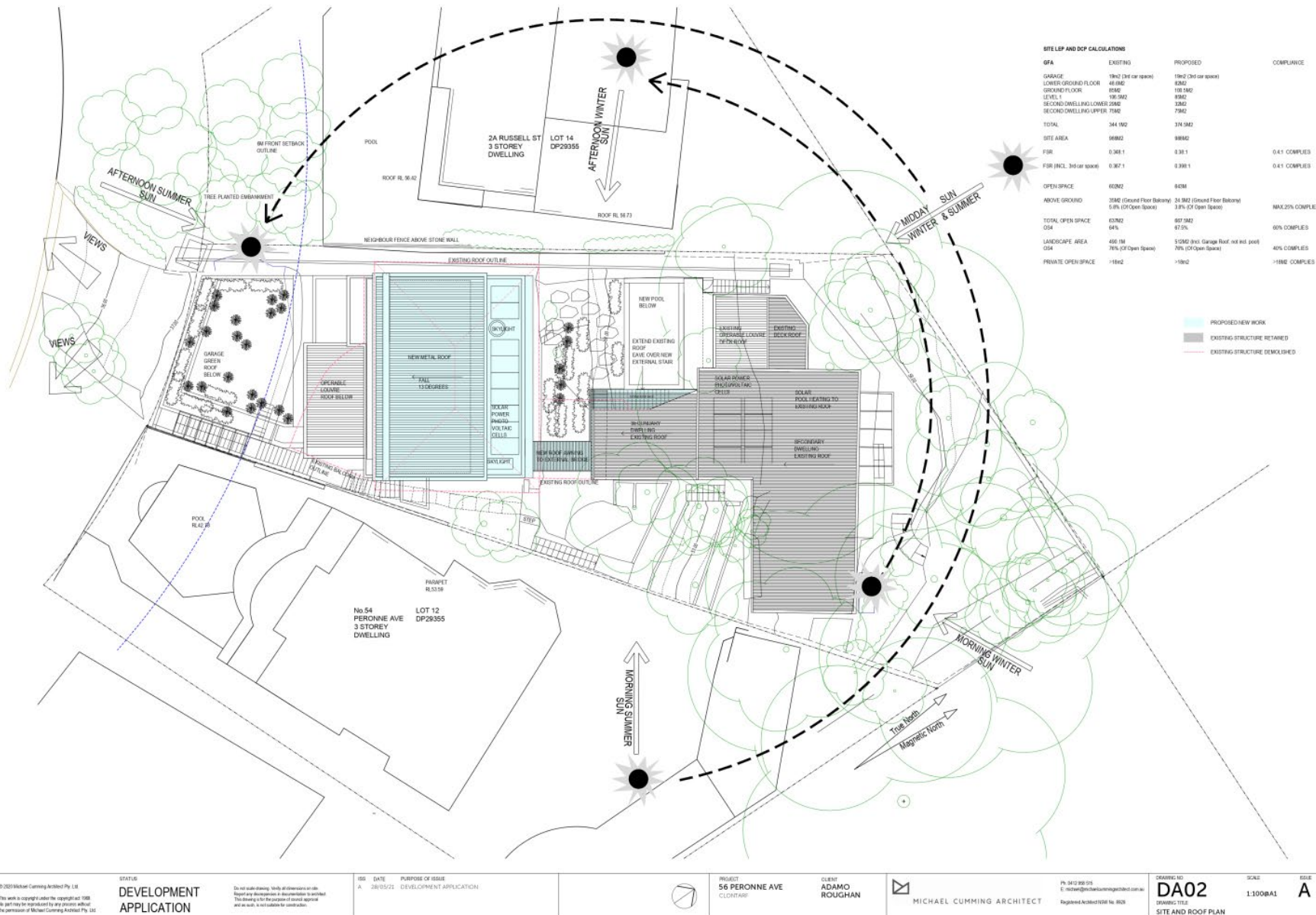
In signing this report, I declare that I do not have a Conflict of Interest.

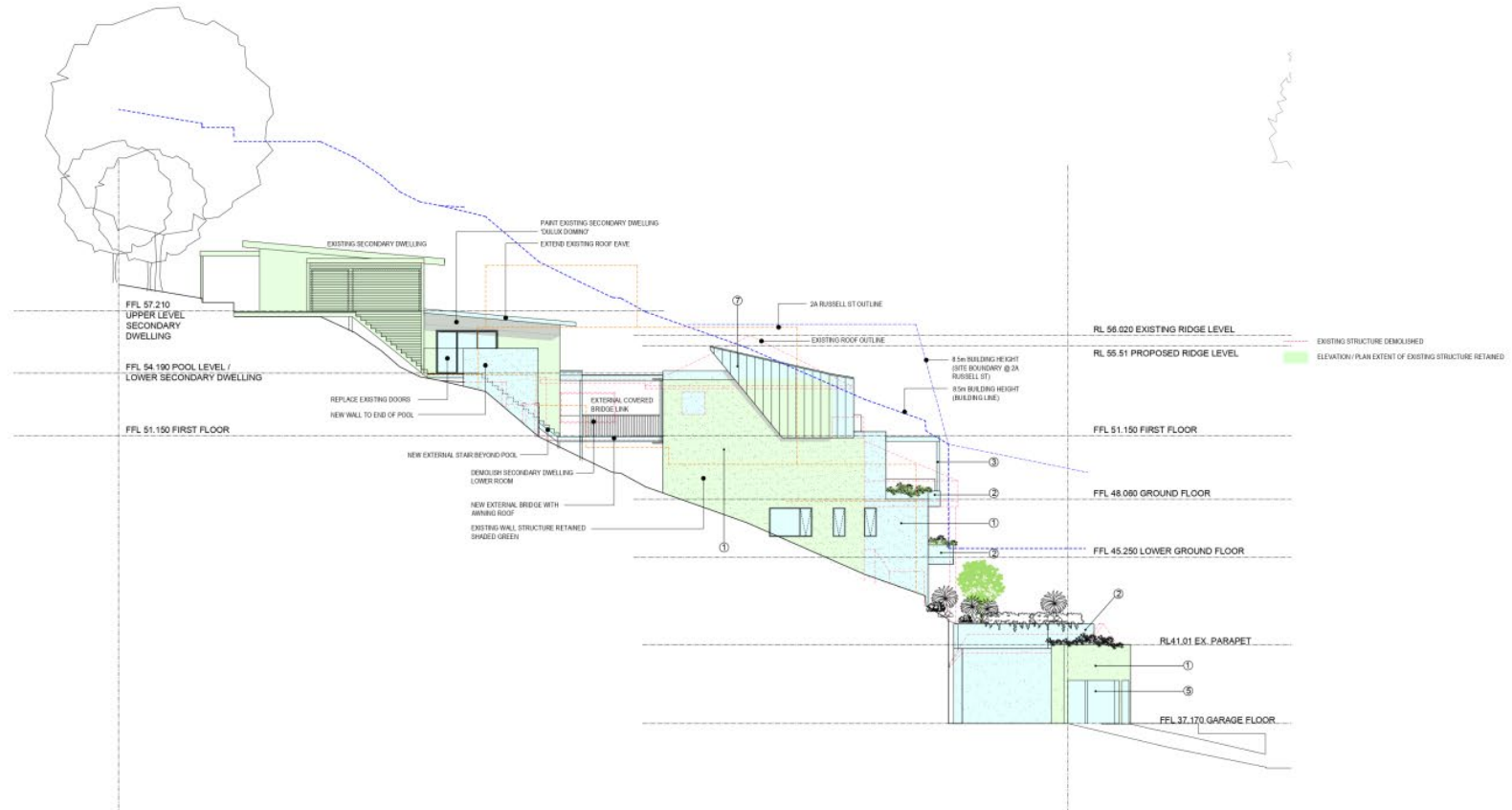
Signed

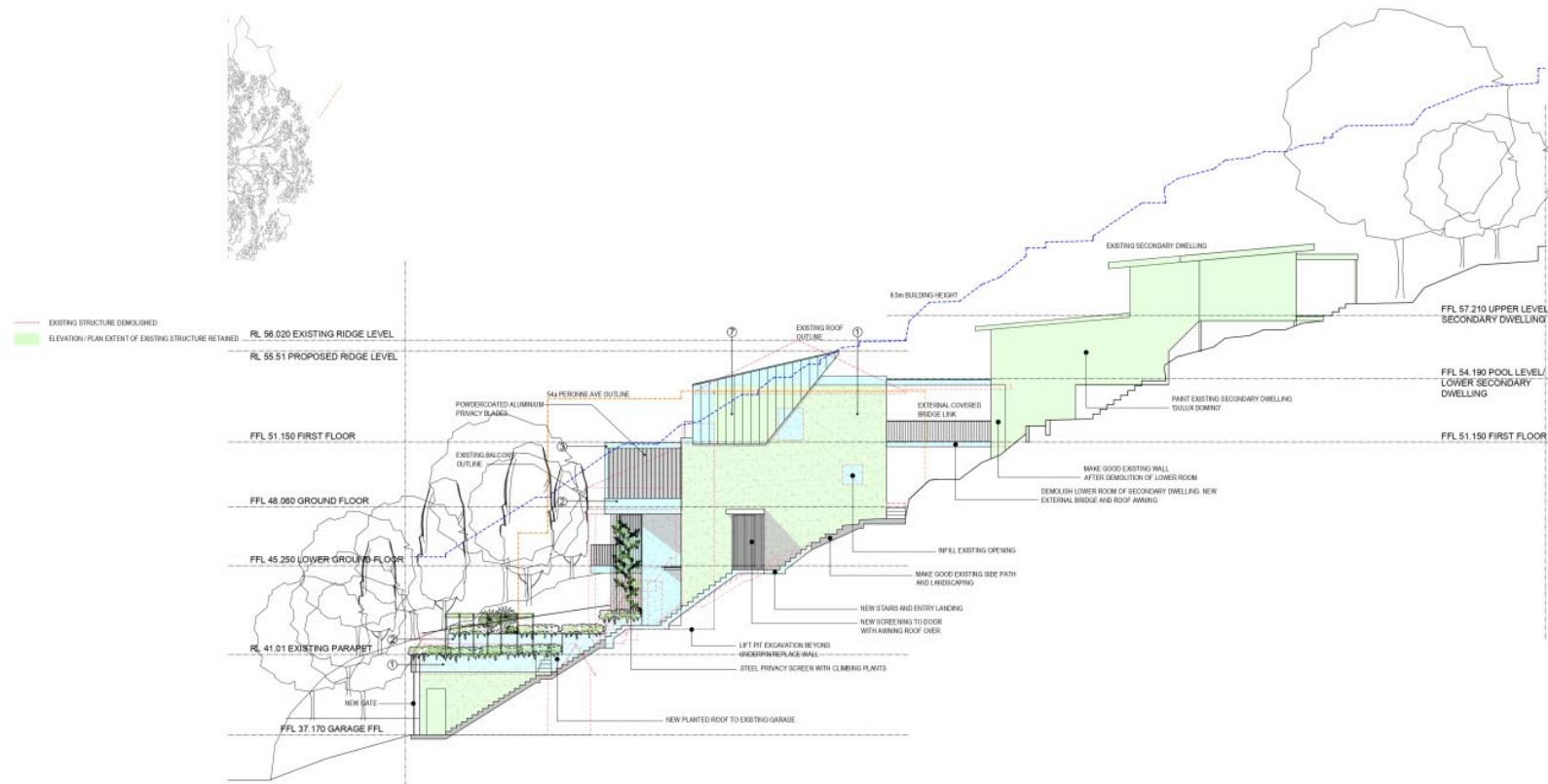
Rebecca Englund, Manager Development Assessments

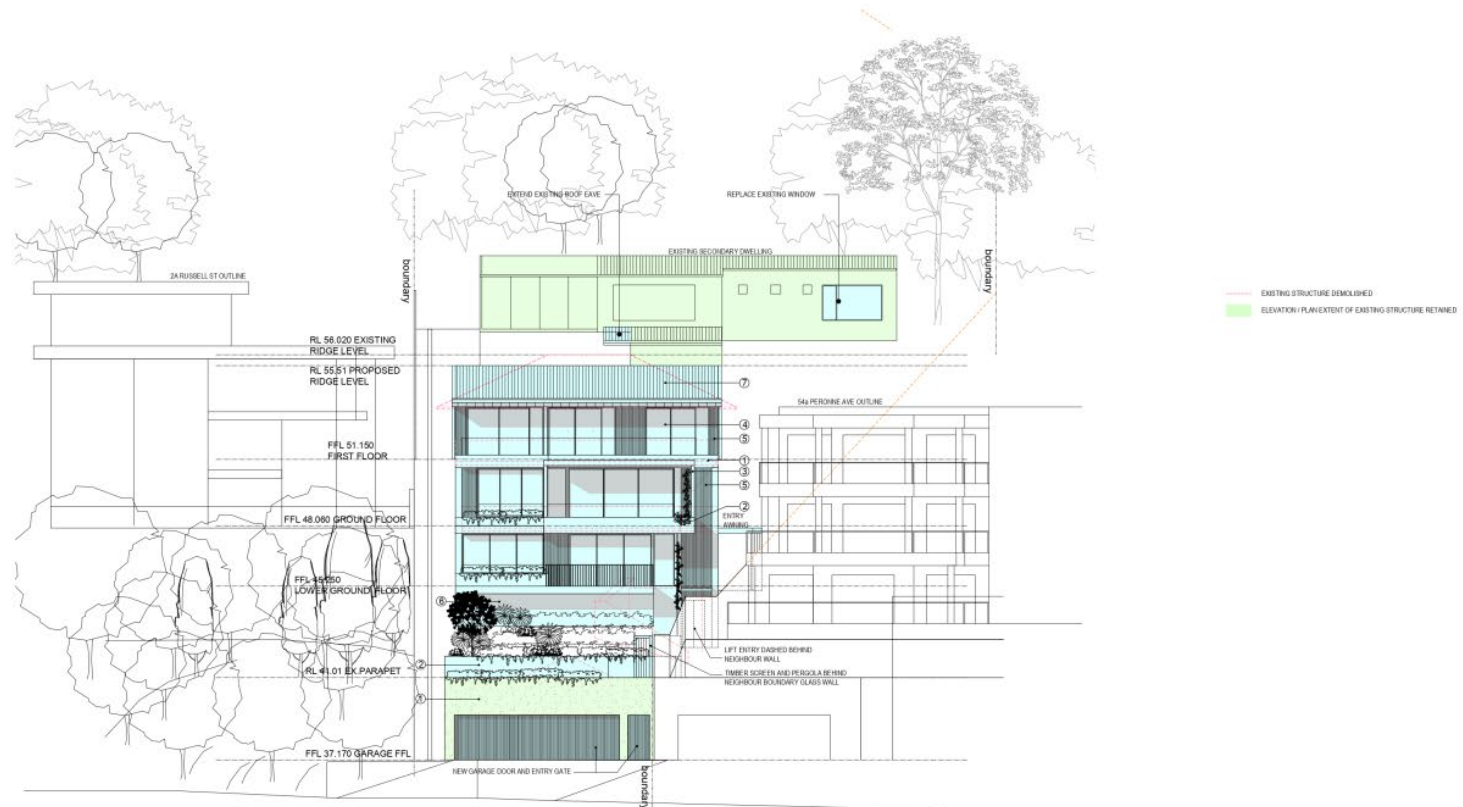
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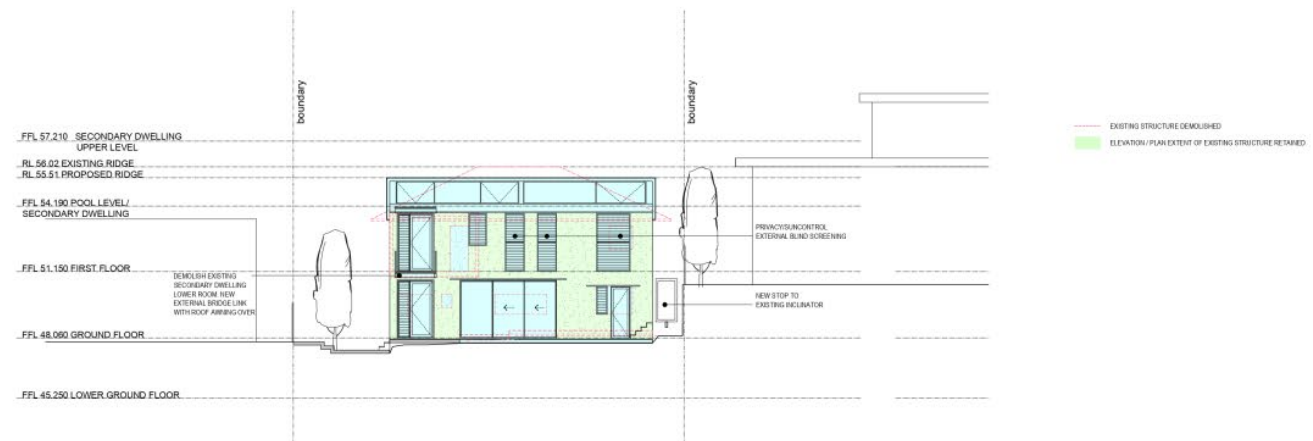
Rebecca Englund, Manager Development Assessments













Clause 4.6 - Exceptions to Development Standards

Variation to Clause 4.3 - Height of Buildings

The proposed development will result in a built form which has a height in excess of the maximum 8.5m height of building control as required by Clause 4.3 of the Manly Local Environmental Plan 2013.

The existing building erected upon the site currently has a height of 10.26m.

The proposed alterations and additions have a maximum building height of 10.41m resulting in a technical non-compliance.

The proposed alterations and additions include a new roof to the existing dwelling. The proposal whilst technically resulting in an increased building height by definition results in a reduction in the effective building height via a 510mm reduction in the ridge level.

Given that the proposal does comply with the maximum height control of 8.5m as required by Clause 4.3 of the Manly LEP 2013 and in order for consent to be granted to the proposal a variation pursuant to Clause 4.6 of the LEP is required.

This Clause 4.6 variation has been prepared having regard to the recent decisions of the Land & Environment Court.

It is submitted that the variation is well founded and is worthy of the support of the Council.

The following is an assessment of the proposed variation against the requirements of Clause 4.6.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP are:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
- (b) to control the bulk and scale of buildings,

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- (c) *to minimise disruption to the following—*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

Clause 4.3 is contained within Part 4 of the LEP and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.

It is also noted that Clause 4.3 does not contain a provision which specifically excludes the application of Clause 4.6.

On this basis, it is considered that Clause 4.3 is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

It is my opinion that compliance with the requirements of Clause 4.3 is both unreasonable and unnecessary in the circumstances of this case for the reason that the proposal is consistent with the objective of the standard.

In addition to the above it is submitted that:

- The proposal is for the carrying out of alterations and additions to the existing building and which currently has a building height of 10.26m and which exceeds the Council's maximum building height control of 8.5m.

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- The non-compliance results from the sites steep topography together with the height of the existing floor levels.
- The proposed alterations and additions include a new roof to the existing dwelling. The proposal whilst technically resulting in an increased building height by definition results in a reduction in the effective building height via a 510mm reduction in the ridge level.
- The additional building height over the 8.5m maximum building height is largely a result of the proposed privacy screening to the existing balcony.
- The proposed dwelling alterations and additions are of a design which is in keeping with the character of the locality and will make a positive contribution to the existing streetscape.

The proposal in my opinion will not result in any unreasonable impacts upon either adjoining properties or the streetscape as a result of the non-compliance.

On this basis, it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard is justified in the circumstances of this case for the following reasons:

1. The existing dwelling currently has a height of 10.26m which exceeds the maximum 8.5m building height as required by Clause 4.3 of the LEP.
2. The proposed alterations and additions include a new roof to the existing dwelling. The proposal whilst technically resulting in an increased building height by definition results in a reduction in the effective building height via a 510mm reduction in the ridge level.
3. The proposal will not result in any additional negative impacts on the privacy or amenity of the adjoining properties to the north west and south east.
4. The proposal will not result in any view loss impacts upon the adjoining properties.

5. Is the proposed development 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.

The proposed development is in my opinion in the public interest because it will provide for the high quality alterations and additions of the existing dwelling and secondary dwelling in a manner which will make a positive contribution to the built form character of the locality. Furthermore, it is considered that the provision of improved privacy screening will result in increased amenity and privacy to the adjoining properties. The proposal is considered to be otherwise compliant with the requirements of the LEP, the applicable zone objectives and the objectives of the particular standard.

The following assessment is provided in relation to the proposals relationship to the objectives for the R2 - Low Density Residential zone and which are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment

The proposal seeks to provide for alterations and additions to the existing dwelling house and secondary dwelling currently erected upon the subject site. The proposal is, therefore considered to be consistent with this objective.

The proposal is also considered to be consistent with the objectives of Clause 4.3 - Height of Buildings in that:

1. The proposed alterations and additions to the existing dwelling house and secondary dwelling are considered to result in a built form which is compatible with the height and scale of surrounding and nearby development noting that the proposal results in a minor technical (by definition) increase to the existing building height while reducing the existing ridge height.
2. The proposal will not result in any unreasonable visual impacts, disruption of views or loss of privacy.
3. The proposal will not result in any visual impacts when viewed from public places. It is considered that the building alterations and additions will improve the aesthetic appearance of the built environment when viewed from Perrone Avenue.

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6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the high quality of the proposal and the absence of any unreasonable detrimental impacts.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the height requirements of Clause 4.3 of the Manly LEP 2013 is appropriate in this instance.



Andrew Minto
Graduate Diploma (Urban & Regional Planning), Associate Diploma (Health & Building Surveying). MPIA.
MINTO PLANNING SERVICES PTY LTD
June 2021

ITEM 3.5	DA2021/1533 - 13 MORGAN ROAD, BELROSE - DEMOLITION WORKS AND CONSTRUCTION OF NEW DWELLING
REPORTING MANAGER	Tony Collier
TRIM FILE REF	2021/798477
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations 3 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 variation to the building height standard.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Building Height development standard pursuant to Clause 20(1) of the Warringah LEP 2000 as the proposed development will be in the public interest and is consistent with the Desired Future Character of the B2 Oxford Falls Valley Locality.
 - B. THAT Council as the consent authority **approves** Development Consent to DA2021/1533 for Demolition works and construction of new dwelling on land at Lot 170 DP 752038, 13 Morgan Road, Belrose, subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT ASSESSMENT REPORT

Application Number:	DA2021/1533
Responsible Officer:	Anne-Marie Young – Principal Planner
Land to be developed (Address):	Lot 170 in DP 752038, No. 13 Morgan Road, Belrose
Proposed Development:	Demolition works and construction of new dwelling, pool and garage.
Locality:	B2 Oxford Falls Valley under Warringah Local Environmental Plan 2000
Category:	Category 2 "Housing"
Referred to DDP:	Yes (24 November 2021)
Referral to IPHP:	No
Land and Environment Court Action:	No
Owner:	• D R Austin • J L Austin
Applicant:	Boston Blyth Fleming Pty Ltd
Application Lodged:	30 August 2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential
Notified:	6 September 2021 to 23 September 2021
Advertised:	No
Submissions Received:	One (1)
Recommendation:	Approval
Estimated Cost of Works:	\$4,430,250

EXECUTIVE SUMMARY

The proposal seeks consent for the demolition of the existing dwelling and pool and the construction of a new dwelling, pool and garage. The new dwelling is located within a similar location to the existing dwelling within the rear north-western corner of the site.

The site is located in an area identified as the "Deferred Lands / Deferred matter" under Clause 1.3 (1A) of the Warringah Local Environmental Plan 2011 (WLEP 2000) and therefore the WLEP 2000 is the prevailing LEP.

The property is located within the B2 Oxford Falls Valley Locality pursuant to the Warringah Local Environmental Plan 2000 and the use of that land for the purpose of 'housing' is classified as a 'Category 2' land use.

The proposal will result in a 30.6% (2.6m) breach of the 8.5m height limit and an 18.1% (1.3m) breach of the wall height. The proposal requires to be determined by the Development Determination Panel as the breach in the height exceeds 10%.

The area to where the height breach relates is to the central pavilion which is setback within the rear of site approximately 160m from Morgan Road. The existing structures, namely the large stables, sit forward of the dwelling effectively screening the proposed dwelling from the public street. Given the siting of the dwelling, the typography and the existing built form it is considered that the proposal will not result in any unreasonable visual impact to the Desired Future Character of the B2 Oxford Falls Valley Locality.

Further, the dwelling will not result in unreasonable amenity impacts on neighbouring properties in terms of view loss, overshadowing or privacy given the considerable distance due to the large lot sizes in the area.

A small section of the swimming pool, the associated pool deck and stairs breach the 10m rear setback. The minor encroachment of the rear setback with ancillary structures will have no unreasonable amenity or visual impacts.

The proposal complies with all other built form controls and no objections have been raised in the referrals.

One (1) submission was received which raises an issue regarding the on-site Wastewater Management Report. Council's Water Management Officer has confirmed that the Report is sufficient and conditions are subsequently recommended to address any issues in respect to the management of waste water.

There is no change to the approved stables and associated structures and a condition will ensure that they will not be used for commercial purposes.

The application is recommended for approval.

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 from the public domain (due to the COVID-19 pandemic) 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;
- No submissions were received in response to the exhibition of 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.

LOCALITY PLAN (not to scale)



Figure 1 - Aerial photo of the subject site.

SITE DESCRIPTION

The subject property is legally described as Lot 170 in DP 752038, No. 13 Morgan Road, Belrose. The site has splayed frontage and address to Morgan Road of 103.38 metres, variable depth of between 185.83 metres and 201.43 metres, rear boundary dimension of 100.665 metres and an area of 1.994ha. The site rises approximately 8 metres in elevation from its front boundary before levelling off along its south-eastern boundary and rising again towards the northern corner of the property.

The property is currently occupied by a single storey residence and swimming pool located in the northern corner of the site (towards the rear of the site) with integrated garage accommodation accessed via a sealed driveway from Morgan Road. A roofed dressage arena, stables, eight (8) paddocks are located to the front of the site and informal landscaped gardens occupy the remainder of the site. It is noted that the site has been cleared of any significant vegetation.

The subject property is currently mapped as being bushfire prone as currently shown by the Northern Beaches Council LGA Bushfire Prone Land Map (s10.3 EP&A Act 1979).

The development is constrained by vegetation within the adjacent reserves to the North East, and rural residential properties to the South East – South West.

SITE HISTORY

DA2013/0892

On 19 November 2013, DA2013/0892 approved demolition works, the construction of a new dwelling house, secondary dwelling, riding stables and arena, tennis court and swimming pool.

Condition 3 of the consent restricted the stables to private use stating:

"No approval is granted under this Development Consent for any commercial use of the riding arena or stables (for example, riding school or animal boarding or training establishment)."

Subsequently a series of applications approved modifications to this consent as detailed below:

Mod2013/0263

Mod2013/0263 approved internal changes to dwelling, front fence, removal of coach's box, reconfiguration of stables, relocation of tennis court.

Mod2014/0098

Mod2014/0098 approved the relocation of the tennis court.

Mod2014/0147

Mod2014/0147 approved the relocation of the tennis court, revised stable, relocation of coach's box and minor changes to the riding arena.

Mod2015/050

Mod2015/050 approved the deletion of the modifications to design of dwelling house and secondary dwelling, changes to the pool, deletion of the tennis court to be replaced with a paddock, changes to the stables, extension of the driveway, and changes to the rainwater tanks.

*Note: The footprint of the stables, dressage arena and paddocks referenced in the subject application are generally consistent with most recent modification. There is no intensification of this use which remains to be a private non-commercial stable.

PLM2021/055

Pre-lodgement meeting PLM2021/055 was held with the applicant and Council Officers on 23 March 2021. The PLM confirmed that the proposal breaches the 8.5m Building height Development Standard by 2.6m and the wall height by 1.3m. Given the context of the site and no significant issues related to the breach, the applicant was advised to submit a request to vary the control via Clause 20 of the *Warringah Local Environmental Plan 2000* with any further Development Application.

*Note: The pre-lodgement plans are the same as those lodged with the subject application.

PROPOSED DEVELOPMENT

The proposal seeks development consent for the demolition of the existing dwelling and construction of a new dwelling designed as three interconnecting pavilions. A pool and landscape works are also proposed. The existing stables, roofed dressage arena, stables and 8 paddocks will be retained. In detail, the proposal includes:

Ground Floor Plan - Central Pavilion

- Formal entry leading to an open plan kitchen living and dining room;
- Laundry;
- Guest bedroom;
- Study; and
- Powder room.

Ground Floor Plan - Northern Pavilion

- Games room with wet bar which opens onto a veranda with pool;
- Storage; and
- Internally and externally accessed bathroom.

Ground Floor Plan - Southern Pavilion

- Secondary living space;
- Bedroom and ensuite;
- Mudroom;
- Storage;
- Three (3) car garage; and
- External access to a home office above.

Note: Internalised glazed links are provided to the proposed north and south pavilions.

First Floor Plan - Central Pavilion

- Three (3) bedrooms all with ensuite;
- Library; and
- Study.

First Floor Plan - Southern Pavilion

- Home office and associated amenities; and
- Utility room with wet bar and opens onto a roof garden terrace.

External (other) work

- Landscaping, including “wet zones”;
- Pool; and
- New entrance gate.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979);
- b) Environmental Planning and Assessment Regulations 2000;
- c) State Environmental Planning Policy No 55 - Remediation of Land;
- d) State Environmental Planning Policy (Infrastructure) 2007;
- e) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; and
- f) Warringah Local Environmental Plan 2000.

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000 and the Northern Beaches Community Participation Plan between 6 September 2021 and 23 September 2021. Furthermore, a notice was placed upon the site.

As a result of the public exhibition process one (1) submission. The matter raised within the submission is as follows:

- **On-site Wastewater Management Report**

The submission claims that the ‘On-Site Wastewater Management Report’ which was submitted with the application was not in accordance with provisions of the *Local Government (General) Regulation (2005)*. The submission states:

“The application is supported with an “On-site Wastewater Management Report” that does not comply with Section 26 of the Local Government (General) Regulation (2005).

Section 26 of the Regulations require an application for approval to install or construct a sewage management facility to be accompanied by details of climate, geology, hydrogeology, topography, soil composition and vegetation of any related effluent application areas together with an assessment of the site in the light of those details.

Section 19 of the Environmental and Health Protection Matters' – "re-use of nutrients". The Regulation requires Council takes into consideration the matters specified including the re-use of resources (including nutrients, organic matter and water). Non-compliance with the above sections poses a significant environmental risk.

The application needs to be accompanied with an amended "On site Wastewater Management" report including hydrologic modelling and nutrient modelling".

Comment

The application was referred to Council's Environmental Health Unit, Water Management Unit and Riparian Lands and Creeks Unit who raised no objection to the development in terms of its impact of wastewater on the environment subject to conditions.

The submission has been reviewed by the relevant Council Officers who confirm that the information as submitted in the 'On-Site Wastewater Management Report' is sufficient. Please refer to the discussion below under the referral section of this report.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Sydney Bushfire Consultants, dated 9 July 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

The Report identifies the bush fire attack level (BAL) of the following components:

- Main Residence – BAL 19
- Garage/Guest Accommodation – BAL 12.5; and
- Games Room – BAL Flame Zone and BAL 12.5.

The application was referred to the NSW Rural Fire Service who have subsequently provided conditions.

The recommendations of the Bush Fire Report have been included as conditions of consent in addition to the conditions imposed by the NSW Rural Fire Service.

REFERRALS

External Referrals

External Referral Body	Comments
Rural Fire Services (NSW)	Supported subject to conditions
Ausgrid	No objection raised and no conditions imposed

Aboriginal Heritage Office (AHO)	Supported subject to condition <i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i> <i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i>
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Internal Referrals

Internal Referral Body	Comments
Bushland and Biodiversity	Supported subject to conditions Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related controls: • Warringah DCP cl. E2 Prescribed Vegetation. • Warringah DCP cl. E6 Retaining Unique Environmental Features. The Development Application seeks approval for demolition of the existing dwelling house and the construction of a new dwelling house with integrated garage accommodation and swimming pool. The Subject Site contains little native vegetation as a result of historical clearing and development under previous approvals. An Arborist Letter has been provided with the application which confirms that there are no trees found on the site within 15 meters of any proposed works area. As such, no prescribed trees or native vegetation is proposed for removal as a result of the proposed development. An approved APZ (DA2013/0892) already exists over the entire site, and therefore does not require additional biodiversity consideration. Subject to conditions of consent, Council's Biodiversity referrals team are satisfied that the proposed development complies with the applicable controls listed above.
Landscape Officer	Supported subject to conditions The application is assessed by Landscape Referral against Warringah LEP 2000 including Clause 63 'Landscaped Open Space', and the B2 Oxford Falls Valley Locality Statement. Key landscape characteristics are to be achieved by the development proposal, including:

Internal Referral Body	Comments
	<i>"to be provided by the application including: enable the establishment of appropriate plantings to maintain and enhance the streetscape and the desired future character of the locality; and enable the establishment of appropriate plantings that are of a scale and density commensurate with the building height, bulk and scale; and enable the establishment of indigenous vegetation and habitat for native fauna. The B2 Oxford Falls Valley Locality statement includes the requirements for the following landscape objective: the natural landscape including landforms and vegetation will be protected and, where possible, enhanced".</i> A Landscape Plan is provided and is generally acceptable subject to conditions to include indigenous vegetation and remove any potential self-seeding species into adjoining bushland areas. An Arboricultural Statement is provided to confirm that no trees were found on the site within 15 meters of any proposed works area, and as such no specific arboricultural issues are raised subject to general tree and vegetation protection measures.
Riparian Land and Creeks Unit	Supported subject to conditions The additional information is showing an improved stormwater runoff management of the outdoor horse area. The proposed vegetated swale will catch and convey the runoff to the pipe system and infiltration zone. The system is expected to reduce the sediment and nutrient loading entering the riparian corridor. The development application is acceptable subject to conditions.
Water Management Unit	Supported subject to conditions The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Council Water Management for Development Policy. The relevant Water Management Policy principles are: • Improve the quality of water discharged to our natural areas to protect the ecological and recreational condition of our, beaches, waterways, riparian areas and bushland. • Water sensitive urban design measures will be integrated into the built form to maximise liveability and reduce the impacts of climate change e.g. urban heat island effect and intensified rainfall events. • Reduce the consumption of potable water by encouraging water efficiency, the reuse of water and use of alternative water sources.

Internal Referral Body	Comments
	The ecological sensitivity of the catchment is described in the Riparian Referral. The site is fully developed and the development application is proposing the demolition and construction of a new dwelling, swimming pool, sewer and stormwater runoff management. Under Council's <i>Water Management for Development Policy</i> the General Stormwater Quality Requirements are applicable. Council notes that the water quality management relies solely on the stormwater harvesting system. The system is satisfactory considering the site-specific arrangement. Stormwater run-off from stables, yards and other areas has the potential to carry a high load of nutrients, pathogens and sediment. As a result, stormwater treatment and management measures are needed to avoid any impacts on water quality. The nutrient and sediment loading from the paddocks needs to be captured and treated prior the runoff is discharged from the property. Run-off from horse yards, enclosures, outdoor arenas, and access areas should be captured and treated on site. For example, a treatment chain could include, swales, which then may drain into an off-line farm dam, sediment basin, water quality treatment pond, or grass buffers and infiltration beds. All stormwater management systems must be protected from impacts by horses and vehicles by using fencing. Treatment and management measures will vary depending on the volume, source and path of the runoff generated by rainfall events and should be incorporated into the design for the development. We recommend the following guideline: https://www.watemsy.com.au/_data/assets/pdf_file/0005/56480/Horse-Property-Developments-in-the-Sydney-Drinking-Water-Catchment.pdf The additional information is showing an improved stormwater runoff management of the outdoor horse area. The proposed vegetated swale will catch and convey the runoff to the pipe system and infiltration zone. The system is expected to reduce the sediment and nutrient loading entering the riparian corridor. The development application is acceptable subject to conditions.
Environmental Health (unsewered lands)	Supported subject to conditions The applicant's consultant advises as follows which is quoted for the readers convenience:

Internal Referral Body	Comments
	An application to build a proposed dwelling at Lot 170 DP 752038 No. 13 Morgan Road, Belrose. At the time of assessment there was an existing five-bedroom dwelling onsite which was scheduled for demolition. At the time of inspection there was a horse stable and arena also located onsite. At the time of inspection wastewater generated in the existing dwelling was being secondary treated in an Ultraclear™ ST-10 Aerated Wastewater Treatment System (AWTS) (confirmed by a Highlands Tanks representative) and disposed via absorption beds. Wastewater generated in the existing stables appeared to be directed to an existing 7,800 L septic pump-out tank, although this could not be confirmed. Therefore, this assessment is required to show how treated wastewater generated from the existing dwelling, after additions and alterations, the office and toilet in the stables (domestic wastewater) and wastewater from the stable (agricultural wastewater) can continue to be sustainably managed separately onsite. The Wastewater report by Strategic Environmental and Engineering Consulting Project Reference: 18000327-P02-WW-02.docx Date of Assessment: 26/07/2021 describes site conditions existing systems and proposed prescriptive solutions to manage water. <u>Domestic Wastewater</u> It is proposed to secondary-treat all wastewater generated by the proposed dwelling, the office and toilet in the stable in the existing Ultraclear™ ST-10 AWTS. Secondary-treated effluent will then be pressure-dosed into an EMA made up of new raised absorption beds. The design loading rate for the raised absorption beds has been based on the weakly pedal Category 4 subsoil encountered in Test Pits 1 and 2. The required bed area is calculated as $1,749/20 = 87.5 \text{ m}^2$. This will be rounded up to 90 m² and provided as two 3.22 m x 14 m beds built end to end, along the contour and to the requirements of AS/NZS1547:2012 (in the area shown in Figure 1 and following the typical details in Figures 2 and 3). The absorptions beds must be raised slightly to ensure they are 200 mm proud of the existing ground surface (Figure 3). Care should be taken to ensure the base of the beds are absolutely level. A two-way zone sequencing valve must be installed to alternately dose each bed, if one is not already installed. <u>Agricultural Wastewater</u> The stable has seven stalls, a feed room, a tack room, two tie-up stalls and two wash bays. 'Agricultural' wastewater will be generated in the stables. The stable has sealed floors which will be covered with wood shavings or similar organic cover. Equine

Internal Referral Body	Comments
	manure will be removed from the floors and stored in a dedicated area for re-use on the surrounding farmland. Most equine urine will be absorbed by the floor covering and then composted as part of the solid waste train. The storage area for the manure and floor coverings must have a sealed floor to prevent any seepage of excrement in the surrounding soils and be covered at all times to prevent rain ingress. SEEC have been informed by the property owners that twice per year the floor coverings will be removed and the stalls will be washed down with a "Gerni" or similar (i.e. they will not be hosed). Assuming it takes one hour to clean the stalls this is approximately 600 L/wash. This water will be filtered by a solids trap before it drains to the existing 7,800 L septic tank (confirmed by a Highlands Tanks representative), but there will be a small amount of organic matter that flows through. We estimate that would be about 1 kg/stall or say 7 kg/wash or equivalent to 40 g/day. Each horse will be washed for about 2 minutes 5 days per week using a hose with a trigger nozzle and so each wash is expected to use about 20 L of water. Assuming a maximum of 8 horses are washed, the peak daily horse-wash volume is expected to be approximately $8 \times 20 \text{ L} = 160 \text{ L/day}$. Additionally, special conditions of use and limitations are documented. <u>Important</u> Sufficient for this referral only; Environmental Health is not approving the wastewater system; as that is subject to a separate Section 68 application to Council, site inspection and will be a condition of any development approval. However, to allow the application to proceed we are satisfied that a suitable wastewater system can be provided for the proposed development on this site. Recommendation approval - subject to conditions

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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	See discussion on "Draft Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	A Development Control Plan does not apply to the site.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	- The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been addressed via a condition of consent. - Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. - Clause 54 and 109 of the EPA Regulations 2000, Council have not requested any additional information.
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) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered to be 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 “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen that would justify the refusal of the application in the public interest.

The proposal has been considered against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979.

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 any conditions contained within the Recommendation.

ENVIRONMENTAL PLANNING INSTRUMENTS:

State Environmental Planning Policies (SEPPs)**State Environmental Planning Policy No. 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.

State Environmental Planning Policy - BASIX

A BASIX certificate has been submitted with the application (refer to Certificate 1221537S-02 dated 9 August 2021).

A condition of consent has been imposed requiring compliance with the requirements of the applicable BASIX certificate.

State Environmental Planning Policy - Infrastructure

Clause 45 of SEPP Infrastructure 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 5m 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 5m of an overhead electricity power line

Clause 45 of SEPP Infrastructure requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out as a result the application was referred to Ausgrid who offered no objections to the application.

Warringah Local Environmental Plan 2011 ("Deferred Matter")

The subject site falls within the area designated as a 'deferred matter' which is subject to future zoning considerations by the NSW Department of Planning. Previous advice from the Department applies and Council has not been informed of any zoning change that has become recently "imminent or certain".

Therefore, for the purposes of this assessment, no further consideration of the provisions of WLEP 2011 is required.

Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

Land Use

Appendix B – Narrabeen Lagoon Catchment Locality Statements	
Definition of proposed development: (ref. WLEP 2000 Dictionary)	Housing means development involving the creation of one or more dwellings whether or not used as a group home. Dwelling means a room or a suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.
Locality:	B2 Oxford Falls Valley
Category of Development:	Category 2

The proposed development is defined as “**housing**” and “**other buildings, works, places or land uses that are not prohibited or in Category 1 or 3**” under the WLEP 2000 dictionary.

The development is identified as **Category 2** development in this locality.

“**Animal boarding or training establishments**” are identified as Category 3 development, however, to fall under this definition the stables and riding arena would need to be used for commercial use. The applicant has confirmed that the continued use of the stables will be for the private use of the owners of the site, and as such do not fall under the definition of ‘**animal boarding or training establishments**’

The footprint of the stables, dressage arena and paddocks referenced in the subject application are generally consistent with most recent approval, namely MOD2015/0055. There is no intensification of this use which remains to be a private non-commercial stable. A condition is included to prohibit the future use of the stables as a commercial business in accordance with the WLEP 2000 land use controls.

Desired Future Character

The subject site is located in the B2 Oxford Falls Locality under WLEP 2000.

The Desired Future Character Statement for this locality is as follows:

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.

Clause 12(3)(b) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Desired Future Character statement under the relevant locality statement.

Accordingly, an assessment of consistency of the proposed development against the Locality's Desired Future Character is provided below:

Comment

The proposal involves a new detached replacement dwelling, as permitted by the housing density standard in the locality.

The construction of the dwelling will not change the present character of the Oxford Falls Valley locality.

The continued use of the approved private riding arena and stables will be "low intensity, low impact" is not defined in WLEP 2000.

The stables and associated arena and paddocks have been approved under a separate application and the proposal does not seek to intensify this private use. As such, a detailed assessment of the stables is not required under this discussion. Notwithstanding, a condition is included to ensure that the stables are not used for commercial purposes and Council's Health have also recommended conditions to ensure that there impacts on the environment.

Although the proposed dwelling is large the bulk and scale is minimised through a pavilion design which breaks up the built form. Furthermore, the dwelling is setback a minimum 133m from the street frontage within the rear (north-east) corner of the site and will generally be screened behind the existing stables and associated structures. As such, it is considered that the dwelling will not result in adverse visual impacts from Morgan Road or negatively impact the present or future character of the Locality which includes other large dwellings set back from the road frontage.

A vegetation buffer will be retained and enhanced between the proposed dwelling and Morgan Road. The landscaping will help reduce any perceived visual impact on the bulk and massing of the development.

The proposal does not result in an increased housing density on the site.

No significant vegetation is proposed for removal as part of this application and the proposal complies with Landscaped Open Space.

In summary, the proposed development is considered to be consistent the Desired Future Character for the B2 Oxford Falls Valley Locality.

Built Form Controls (Development Standards)

The following table outlines compliance with the Built Form Controls of the above locality statement.

Built Form Controls			
Control	Required	Proposed	Compliance
Housing Density	1 dwelling/20ha	1 dwelling/4.6ha	Existing
Building Height			
Building Height	8.5m	11.1m	No (30.6%)
Wall Height	7.2m	6.8m to 8.5m	No (18.1%)
Front Building Setback	20m	133m	Complies
Rear & Side Building Setback	10m	Side East: 12m to 15m West: 59m to 67m Rear Dwelling: 10m Pool: 8.4m Pool Deck: 6.6m Stairs: 40m	Complies Complies Complies No No Complies
Landscaped Open Space	30% (13,874m ²)	32% (14,656m ²)	Complies
Car Parking	2 spaces	3 spaces	Complies

The proposed development is inconsistent with the Height and Rear Setback Built Form Controls, accordingly, further assessment is provided against the provisions of Clause 20(1) below.

Clause 20(1) stipulates:

“Notwithstanding clause 12(2)(b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) General Principles of Development Control

The proposal is generally consistent with Clause 20(1) of the General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is consistent with the Locality’s Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under ‘State Environmental Planning Policies’). Accordingly, the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Description of variations sought and reasons provided:**Built Form Control**Building Height

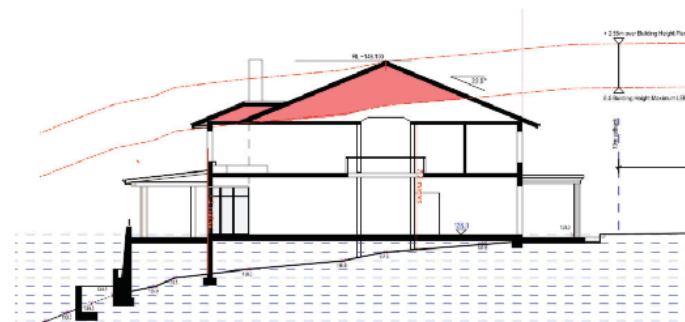
The B2 Oxford Falls Valley Locality Statement requires:

Buildings are not to exceed 8.5 metres in height, where height is the distance measured vertically between the topmost point of the building (not being a vent or chimney or the like) and the natural ground level below.

Buildings are not to exceed 7.2 metres from natural ground level to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas located wholly within a roof space), but this standard may be relaxed on sites with slopes greater than 20 per cent within the building platform (measured at the base of the walls of the building), provided the building does not exceed the 8.5 metre

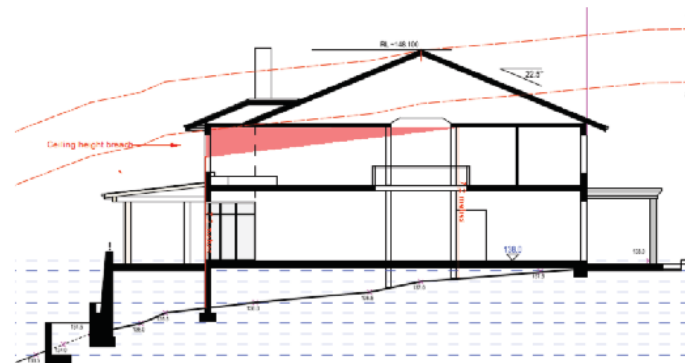
height standard, is designed and located to minimise the bulk of the building and has minimal visual impact when viewed from the downslope sides of the land.

The proposal has a maximum building height of 11.1m (RL 148.1) measured to the apex of the hipped roof, refer to image below. The proposal breaches the height limit by 2.5m which represents a 30% variation.



Building height breach

The wall height varies between 6.9m to 8.5m and is calculated as breaching the control by 1.3m which equates to a variation of 18%, see image below.



Ceiling height breach

Comment

The applicant has lodged a request to vary Clause 20 of the WLEP 2000 which presents the following arguments to justify the departure with the height control:

- *The non-compliant building height elements are located approximately 84 metres from the nearest residential dwelling being the property to the west at Lot 169 Morgan Road. Given such spatial separation the non-compliant building height elements will not give rise to unacceptably amenity impacts on surrounding development in relation to privacy and solar access as detailed on the accompanying shadow diagrams.*

- *The non-compliant building height elements will not give rise to unacceptable visual impacts or view loss as demonstrated on the view analysis diagram (See image below).*



View analysis taken from Lot 169 Morgan Road to the west.

- *A complying area of landscaped open space is provided on the site and accordingly a sense of openness is maintained despite the non-compliance.*
- *The non-compliant roof and wall elements are located approximately 160 metres from Morgan Road and due to the topography of the site will not be discernible in a streetscape context.*
- *The non-compliant roof and wall elements will not give rise to any adverse amenity or streetscape consequences and do not contravene any general principles of development control.*

The applicant's justification is supported. It is agreed that the height breach occurs at the pitched roof form which minimises in bulk and degree of non-compliance towards the apex and at the western side of the dwelling. The breach is also partially a result of the topography which has a 3.2m change in level below the footprint of the proposed dwelling.

It is also noted that the proposed height at the apex is equivalent to the ground floor of the neighbouring dwelling at Lot 169 Morgan Road (to the west) and which is separated from the proposed dwelling by approximately 107m. Similarly, the non-compliant elements are setback from the street by approximately 160m and are elevated and partly concealed by existing structures on the site which are to be retained. The overall effect is considered to minimise the visual impact of the pitched roof form (and non-compliance) and wall height from neighbouring properties and the street.

Rear Building Setback

The B2 Oxford Falls Valley Locality Statement requires development to maintain minimum rear building setbacks of 10.0m. The northern wall of the proposed dwelling is set back a compliant 10m from the rear boundary, however, the pool is setback 8.4m, the pool deck 6.6m and stairs 4m to the rear.

The applicant has lodged a request to vary Clause 20 of the WLEP 2000 which presents the following arguments to justify the departure with rear set back control:

- *The non-compliant swimming pool and access stair structures are located approximately 190 metres from the front boundary of the property and to that extent will not be discernible in a streetscape context.*
- *The non-compliant swimming pool and access stair structures are located approximately 107 metres from the nearest residential receiver being the property to the west Lot 169 Morgan Road. Given the height of these structures relative to existing ground level, and the spatial separation maintained to surrounding development, the non-compliant swimming pool and access stair structures will not give rise to any adverse residential amenity impacts.*
- *The balance of the rear setback area is available for landscaping as detailed on the accompanying landscape plan.*
- *The non-compliant rear boundary setback structures do not require the removal of any trees, significant vegetation or natural features.*
- *A complying area of landscaped open space is provided on the site and accordingly a sense of openness is maintained despite the non-compliance.*
- *The non-compliant rear boundary setback structures will not give rise to any adverse amenity or streetscape consequences and do not contravene any general principles of development control.*
- *The non-compliant swimming pool and access stair structures will not contravene any state planning policies.*

Comment

The applicant's justification to the rear setback control is supported. The minor encroachment of the rear setback with ancillary structures will have no unreasonable amenity or visual impacts.

As detailed above, the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1), in addition the proposal is consistent with the underlying objectives of the Building height and rear setback Built Form Control.

It is for these reasons that the variation to the Building Height and Rear Setback Built Form Control (Development Standard) pursuant to Clause 20(1) is supported.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of WLEP 2000 are applicable to the proposed development:

Principle	Applies	Comments	Compliance
CL38 Glare & reflections	Yes	A standard condition of consent will ensure new roofs are of dark, non-reflective materials.	Yes
CL42 Construction Sites	Yes	Standard conditions apply	Yes

Principle	Applies	Comments	Compliance
CL43 Noise	Yes	The development is not likely to cause any unreasonable or unusual noise in the rural area.	Yes
CL44 Pollutants	Yes	The development is not likely to cause any unreasonable pollutants, conditions apply.	Yes
CL50 Safety & Security	Yes	The proposal will not detract from safety and security in the area.	Yes
CL51 Front Fences and Walls	Yes	The landscape plan references a curved front fence at the entrance to the site. The plans do not note the height of the front fence, although all other fencing is noted as 1.4m high. Subject to a condition to limit the height of the entrance fence to 1.4m the proposal is acceptable.	Yes
CL54 Provision and Location of Utility Services	Yes	The development will utilise the existing connections.	Yes
CL56 Retaining Unique Environmental Features on Site	Yes	There are a number of rock platforms across the site, some of which will be removed or built over in the region of the riding arena and stable. However, a significant number of rock platforms and outcrops will be retained by the development, which generally avoids the majority of the rocky areas on site.	Yes
CL57 Development on Sloping Land	Yes	The control states that development should minimise excavation and limit fill to 1m in depth. The proposed pool will sit on piers and the excavation is limited to that relating to the construction of foundation and underground stormwater tanks. The minor non-compliance is therefore considered acceptable	Yes
CL58 Protection of Existing Flora	Yes	The proposed works are generally in areas which do not contain existing significant vegetation and will not result in the removal of large numbers of trees. Council's Natural Environment Unit has assessed the proposal and has not raised any concerns.	Yes
CL60 Watercourses & Aquatic Habitats	Yes	Council's Natural Environment Unit have no objection subject to conditions.	Yes
CL61 Views	Yes	No objections were received from neighbours to the proposal, and the site inspection conducted did not reveal any likely unreasonable view loss as a result of the proposed works	Yes
CL62 Access to sunlight	Yes	The works will not create any unreasonable overshadowing of neighbours given the size of the site and the proposed setbacks	Yes

Principle	Applies	Comments	Compliance
CL63 Landscaped Open Space	Yes	32% of the site will remain landscaped	Yes
CL63A Rear Building Setback	Yes	The request to vary Clause 20 of the WLEP 2000 is supported, refer to discussion above.	No
CL64 Private open space	Yes	Ample private open space will be available on site.	Yes
CL65 Privacy	Yes	The proposal is not in close proximity to neighbours and will not overlook any neighbour's private open spaces or primary living areas, and will not create any unreasonable privacy impacts	Yes
CL66 Building bulk	Yes	It is acknowledged that the proposed replacement dwelling is large. However, the dwelling is set back over 130m from the street and the existing built structure on site that sit forward of the dwelling and screen it. As such, the bulk will not result in unreasonable impacts on visual amenity of the character of the area. Refer to discussion above.	Yes
CL67 Roofs	Yes	The hipped roofing will not have any unreasonable impacts or be out of character in the area, despite part of the roof breaching the height limit, refer to discussion above.	Yes
CL68 Conservation of Energy and Water	Yes	A BASIX Certificate was provided with the application. A condition of consent will ensure that the BASIX requirements are carried out.	Yes
CL70 Site facilities	Yes	There is ample room on site for site facilities.	Yes
CL71 Parking facilities (visual impact)	Yes	The development will utilise the existing driveway access.	Yes
CL72 Traffic access & safety	Yes	The proposed double garage meets the minimum requirements.	Yes
CL74 Provision of Car parking	Yes	Three spaces are proposed.	Yes
CL75 Design of Car parking Areas	Yes	The proposed double garage meets the minimum requirements.	Yes
CL76 Management of Stormwater	Yes	Council's Development Engineers have assessed the proposal and raised no	Yes

Principle	Applies	Comments	Compliance
		concerns. Conditions of consent have been provided	
CL78 Erosion & Sedimentation	Yes	Standard conditions of consent will ensure erosion and sedimentation is contained during construction.	Yes
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	The application was referred to the Aboriginal Heritage Office (AHO) and has confirmed that no Aboriginal heritage sites have been recorded. A condition is recommended to protect any items that may be discovered during earthworks.	Yes
CL83 Development of Known or Potential Archaeological Sites	Yes	The application was referred to the Aboriginal Heritage Office (AHO) who confirmed that there are no aboriginal heritage sites. A condition is recommended to protect any items that may be discovered during earthworks.	Yes

Other Relevant WLEP 2000 Clauses

Schedule 8 - Site analysis

Site Analysis	A site analysis has been provided
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POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019.

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

A monetary contribution of **\$44,302.50** is required for the provision of new and augmented public infrastructure. The contribution is calculated at 1% of the total development cost of \$4,430,250.

This has been included as a condition of consent.

CONCLUSION

The proposal has been considered against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979.

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 any conditions contained within the Recommendation.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000, and the relevant codes and policies of Council.

- The new dwelling is located within a similar location to the existing dwelling within the rear north-western corner of the site, utilising the existing services.
- The proposal will result in a 30% (2.6m) breach of the 8.5m height limit and an 18% (1.3m) breach of the wall height which relate to the central pavilion of the dwelling which is setback 160m from Morgan Road.
- The breach in height partially relates to the topography of the land which slopes below the area of the central pavilion.
- The large stables, sitting forward of the dwelling effectively screening the proposed dwelling from the public street.
- Existing and proposed landscaping along the street frontage and western boundary will help soften the bulk of the dwelling.
- Given the siting of the dwelling, the typography of the site and the existing built form it is concluded that the proposal will not result in any unreasonable visual impact to the Desired Future Character of the Oxford Falls Valley area.
- The elements that breach the height limit will not give rise to unreasonable amenity impacts on neighbours by way of overshadowing, view loss or loss of privacy.
- The minor encroachment of ancillary structures within the 10m rear setback will not give rise to any unreasonable visual impacts or amenity impacts on neighbours.

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

RECOMMENDATION

APPROVAL

THAT Council as the consent authority grant Development Consent to DA2021/1533 for demolition works and construction of new dwelling, pool and garage on land at Lot 170 in DP 752038, No. 13 Morgan Road, Belrose 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
DA01 Rev A Site Plan	09/07/2021	Prestonpeterson
DA02.1 Rev A Ground Floor Plan and Garden	09/07/2021	Prestonpeterson
DA02.2 Rev A Ground Floor Plan	09/07/2021	Prestonpeterson
DA03 First Floor Plan	09/07/2021	Prestonpeterson
DA04 Rev A Roof Plan	09/07/2021	Prestonpeterson
DA05 Rev A Elevation Sheet 1	09/07/2021	Prestonpeterson
DA06 Rev A Elevation Sheet 2	09/07/2021	Prestonpeterson
DA07 Rev A Sections	09/07/2021	Prestonpeterson
DEM01 Rev A Demolition Plan	09/07/2021	Prestonpeterson
DRV01 Rev A Driveway Plan	09/07/2021	Prestonpeterson
EXF01 Rev A Excavation and Fill Plan	09/07/2021	Prestonpeterson

Engineering Plans		
Drawing No.	Dated	Prepared By
SEC01 Rev A Sediment and Erosion Control Plan	09/07/2021	Prestonpeterson

Reports / Documentation – All recommendations and requirements contained within:		
Report	Dated	Prepared By
Waterways Impact Statement Issue A	08/07/2021	NB Consulting Engineers
Wastewater Management Ref 18000327-P02-WW-02	26/07/2021	Strategic Environmental and Engineering Consulting
Waste Management Plan	No date	No signature
Geotechnical Report	07/05/2021	White Geotechnical Group
Arboricultural Report	18/05/2021	Koala Arbor
Bushfire Report Ref 79BA-2002	09/07/2021	Sydney Bushfire Consultants
Bushfire Risk Assessment Certificate	09/07/2021	Sydney Bushfire Consultants
BASIX Certificate No. 1221157S-02	09/08/2021	Certified Energy 1

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan Rev DD-2 (Drawings 1-3)	05/07/2021	Paul Bangay

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department/Authority/Service	EDMS Reference	Dated
NSW Rural Fire Service	NSW Rural Fire Service Referral	21 September 2021

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of

whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

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

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

of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - 1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - 2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - 3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - 4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES/CHARGES/CONTRIBUTIONS

5) Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of **\$44,302.50** is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section

7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of **\$4,430,250.00**.

The monetary contribution is to be paid prior to the issue of the Construction Certificate. 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 Road, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6) **Security Bond**

A bond (determined from cost of works) of **\$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 A CONSTRUCTION
CERTIFICATE**

7) **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to existing system in Morgan Road.

Details demonstrating compliance 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 the development.

8) **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

9) **Erosion and Sediment Control Plan**

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

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

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

Reason: Protection of the receiving environment.

10) **Water Quality Management**

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

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

Reason: Protection of the receiving environment.

11) **Detailed Design of Stormwater Treatment Measures**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the NB Consulting Eng. 210575 rev B and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

12) **Amendments to the approved plans**

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

- a) The curved front fence at the entrance to the site referenced on the Landscape Plan shall be limited to 1.4m in height.

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.

13) **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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.

14) **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for

the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

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

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

Reason: To provide public and private safety.

15) **Approval to Install an On-Site Sewage Management System**

This Development approval does not approve the proposed Waste Water Management System.

Prior to the release of the Construction Certificate, the applicant must receive an 'Approval to Install an On-Site Sewage Management System' from Council.

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

Reason: To fulfil the requirements under Section 68 of the Local Government Act 1993.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16) **Public Liability Insurance - Works on Public Land**

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

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

17) **Dead or injured wildlife**

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

Reason: To protect native wildlife.

CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**18) Tree and Vegetation Protection – General**

- a) Existing trees and vegetation shall be retained and protected, including:
 - (i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - (ii) all trees and vegetation located on adjoining properties,
 - (iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - (i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - (ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - (iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - (iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained.
 - (v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - (vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - (vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority.
- c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Statement prepared by Koala Arbor Consulting Arborists, including:
 - (i) 1.8m chain link fence to be position five meters off the northern property boundary with a sign saying TPZ.

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.

Reason: Tree and vegetation protection.

19) **Road Reserve**

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

Reason: Public safety.

20) **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

21) **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.

22) **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.

23) **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.

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

24) **Landscape Completion**

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

- (i) at least five (5) locally native trees are to be incorporated into the landscape scheme, as either additional planting, or in place of the nominated tree planting, to satisfy WLEP 2000 clause 63, and species shall be installed as a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- (ii) all trees shall be planted into a prepared minimum planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established,
- (iii) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, at 4 plants per metre square for groundcovers of a minimum

140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,

- (iv) the nominated *Rhapiolepis indica* species shall be deleted and replaced with a non self-seeding shrub of similar size and form.

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

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative
<https://5milliontrees.nsw.gov.au/>

25) **Protection of Aboriginal Cultural Heritage items**

Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected.

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

Reason: Protection of Aboriginal heritage.

26) **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.

27) **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) 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.

28) **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

- a) Waterways Impact Statement Issue A dated 08/07/2021 prepared by NB Consulting Engineers;
- b) Wastewater Management Site & Soil Evaluation & Disposal System Design Ref 18000327-P02-WW-02 dated 26/07/2021 prepared by Strategic Environmental and Engineering Consulting;
- c) Waste Management Plan;
- d) Geotechnical Report dated 07/05/2021 prepared by White Geotechnical Group;
- e) Arboricultural Report dated 18/05/2021 prepared by Koala Arbor;
- f) Bushfire Report Ref 79BA-2002 dated 09/07/2021 prepared by Sydney Bushfire Consultants;
- g) Bushfire Risk Assessment Certificate dated 09/07/2021 prepared by Sydney Bushfire Consultants, and
- h) BASIX Certificate No. 1221157S_02 dated 09/08/2021 prepared by Certified Energy 1.

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

Reason: To ensure compliance with standards.

29) **House Number**

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

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

Reason: Proper identification of buildings.

CONDITIONS WHICH MUST BE COMPLIED WITH AT ALL TIMES

30) **Landscape Maintenance**

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

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

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

Reason: To maintain local environmental amenity.

31) **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

32) **No approval of commercial Stables**

No approval is granted under this Development Consent for any commercial use of the riding arena or stables (for example, riding school or animal boarding or training establishment).

Reason: To ensure that the development is consistent with the WLEP 2000 controls.

Site Analysis

1. Where to locate the New Dwelling?

The decision to locate the new dwelling in the area of the existing dwelling (proposed for demolition) was not taken lightly or without due thought. By locating the new dwelling where proposed, the existing and substantial esquire infrastructure can remain and continue throughout the construction works and into the future. Additionally, the existing building services can be re-used and supplemented as required. The views enjoyed by the existing dwelling will remain.

2. Solar access

The proposed dwelling has located its primary living spaces to the North-East which coincides with the primary views over the paddocks below and the bushland beyond. These spaces will enjoy wonderful solar gain through the morning even in winter. The provision of covered external areas, and trellised areas will provide shielding from the summer sun.

3. Prevailing winds

The proposed dwelling has been located to capture the predominant Northern Beaches north-easterlies. These will be enjoyed by occupants both on the external terrace spaces as well as within the dwelling. The proposed garage building is located to the south of the proposed building works and will provide a buffer to the harsh southerlies.

4. Bushfire

The Bushfire Report captures the recommendations for the site. We have set the northern facade of the Games Room 10m back from the boundary and also located the pool to this boundary to aid potential bushfire threat.

5. Site Area untouched

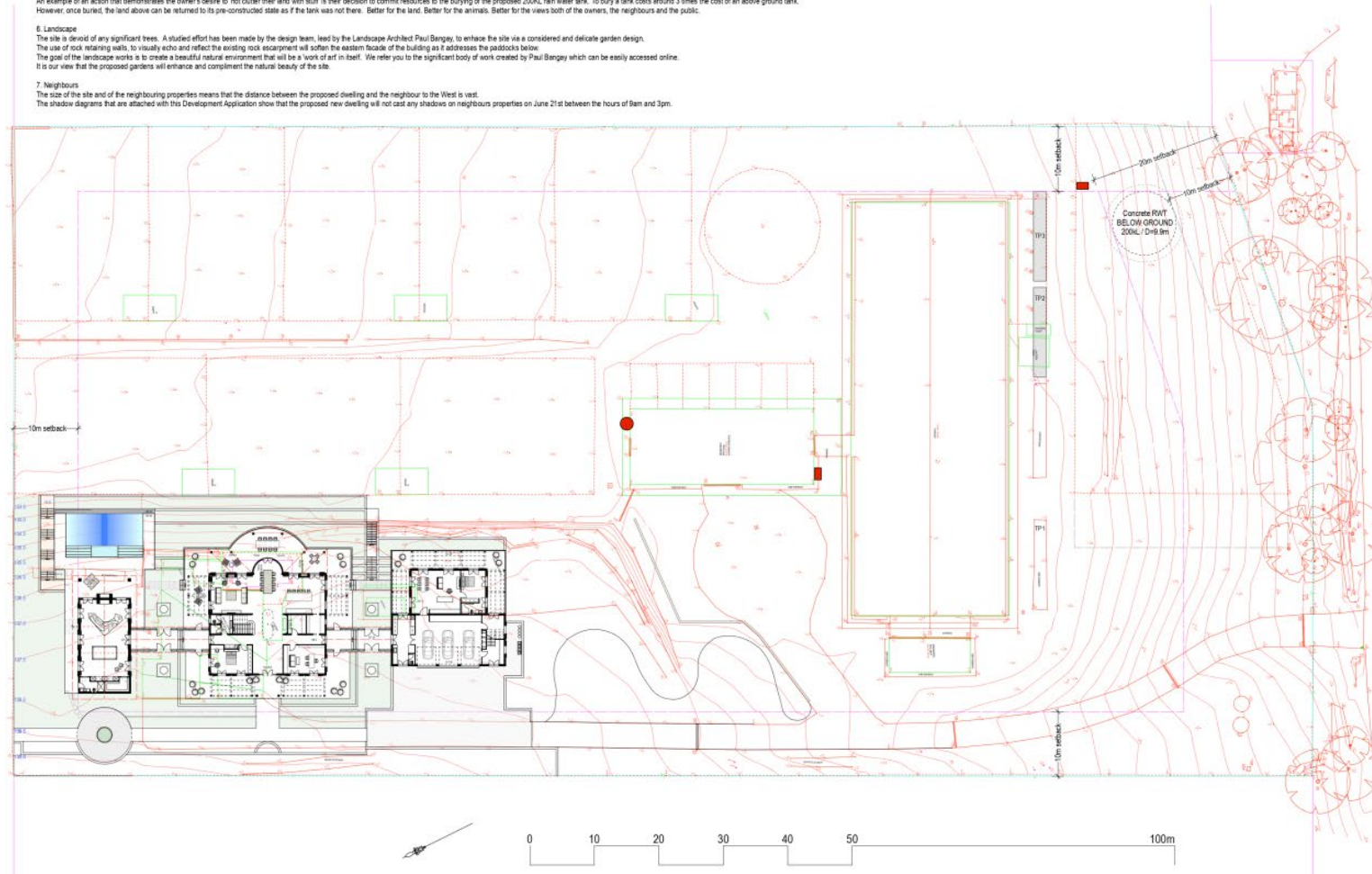
The proposed works effect approximately 20% of the site area. The vast majority of the site will remain untouched and operational. This is an intentional decision based on the owner's request to respect the natural beauty of the existing landscape. An example of an action that demonstrates the owner's desire to not clutter their land with stuff is their decision to commit resources to the buying of the proposed 2000L rain water tank. To buy a tank costs around 3 times the cost of an above ground tank. However, once buried, the land above can be returned to its pre-constructed state as if the tank was not there. Better for the land. Better for the animals. Better for the views both of the owners, the neighbours and the public.

6. Landscape

The site is devoid of any significant trees. A studied effort has been made by the design team, led by the Landscape Architect Paul Bengay, to enhance the site via a considered and delicate garden design. The use of rock retaining walls, to visually echo and reflect the existing rock escarpment will soften the eastern facade of the building as it addresses the paddocks below. The goal of the landscape works is to create a beautiful natural environment that will be a work of art in itself. We refer you to the significant body of work created by Paul Bengay which can be easily accessed online. It is our view that the proposed gardens will enhance and complement the natural beauty of the site.

7. Neighbours

The size of the site and of the neighbouring properties means that the distance between the proposed dwelling and the neighbour to the West is vast. The shadow diagrams that are attached with this Development Application show that the proposed new dwelling will not cast any shadows on neighbours properties on June 21st between the hours of 9am and 3pm.



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Nominated Architect
Jonathan Peterson NSW ARB 5776

Client

Jenny and David
Austin

Project

Austin Residence

13 Morgan Road Belrose
2085

Project Code

AUST01

Development
Application

A 9/7/21 DA-Austin

Drawing

Site Plan

Drawing Number

DA01

Revision

A

Scale

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Rev Date

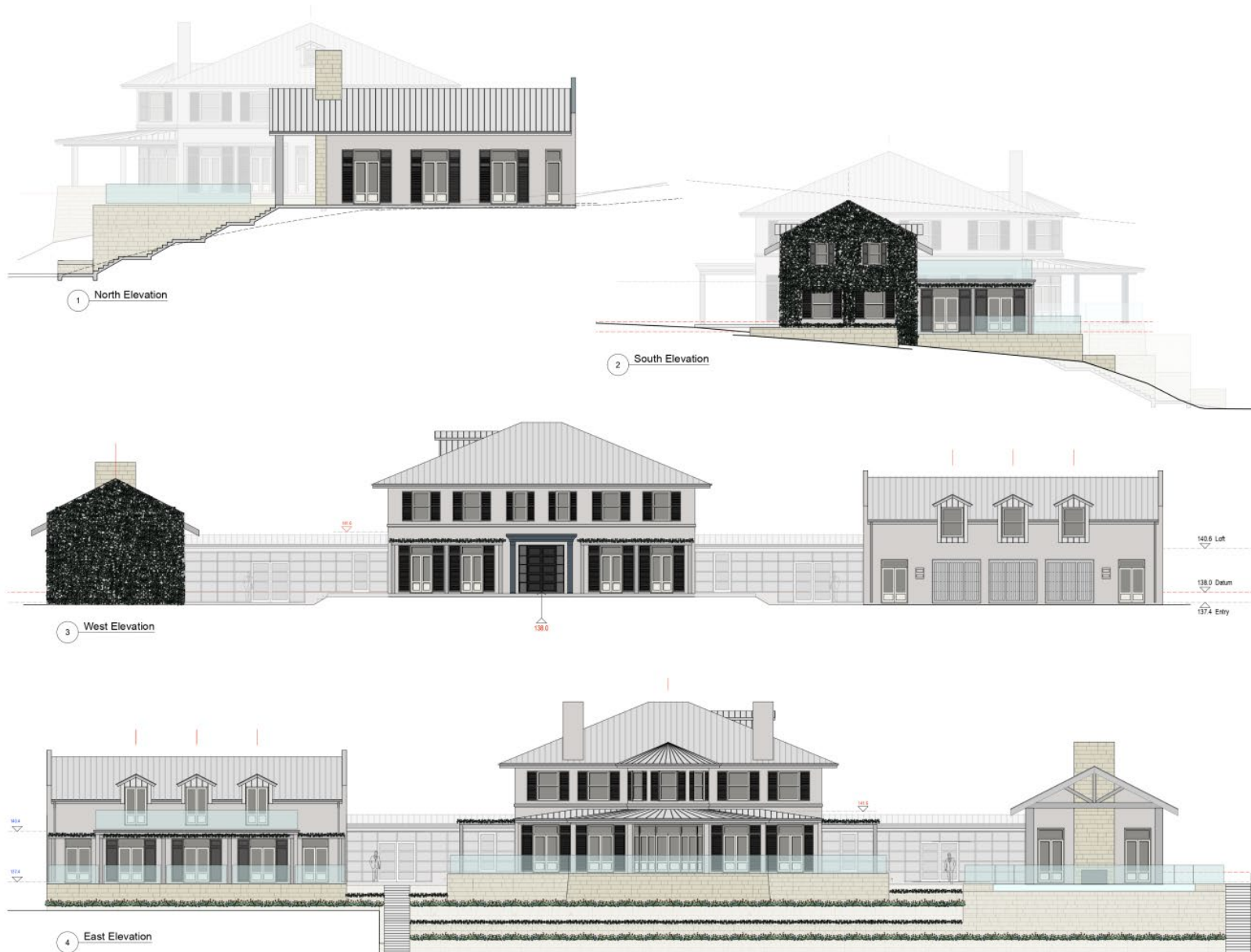
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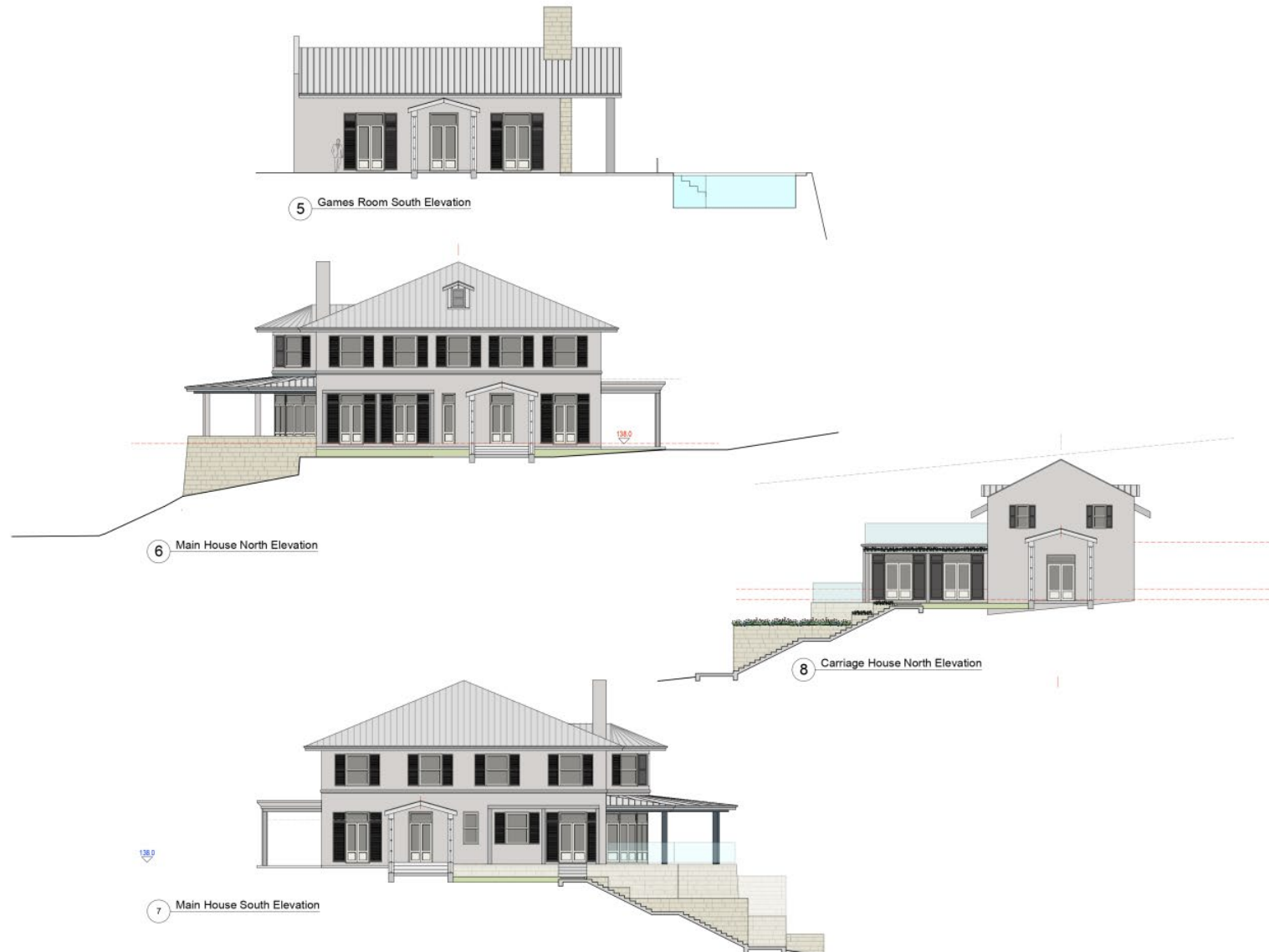
Development
Application

4. 9/7/21 DA05

Drawing
Elevation
Sheet 1

Drawing Number
DA05

Revision
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Rev Date
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4 9/7/21 DA06

Drawing

Elevation
Sheet 2

Drawing Number

DA06

Revision

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Scale

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Rev Date

9/7/21

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4.3.2 Development Standards / General Principles of Development Control

4.3.2.1 Development Standards

Housing Density

The maximum housing density is 1 dwelling per 20 ha of site area, except:

- a) where this standard would prevent the erection of one dwelling on an existing parcel of land, being all adjacent or adjoining land held in the same ownership on 8 March 1974 and having a combined area of not less than 2 ha

The development satisfies this clause and is on a parcel of land greater than 2 ha. Only 1 replacement dwelling is proposed on the site.

Building Height – Clause 20 Variation

Pursuant to this development standard buildings are not to exceed 8.5 metres in height measured to the topmost point of the building or 7.2 metres in height to the underside of the ceiling on the upper most floor.

The proposed dwelling is part 1 - 2 storeys in height with a maximum building height at the ridge of the central pavilion of 11.05 metres representing a non-compliance of 2.55 metres or 30%. The extent of overall building height variation is depicted in Figures 5 and 6 over page. The balance of the development, including the northern and southern pavilions, sit comfortably below the 8.5 metre height standard.

It is important to note that the extent of non-compliance is limited to the non-habitable central pavilion roof form.

Similarly, the eastern edge of the central pavilion exceeds the 7.2 metre wall height standard by a maximum of 1.5 metres with the balance of the development, including the northern and southern pavilions, comply with the 7.2 metre maximum wall height standard.

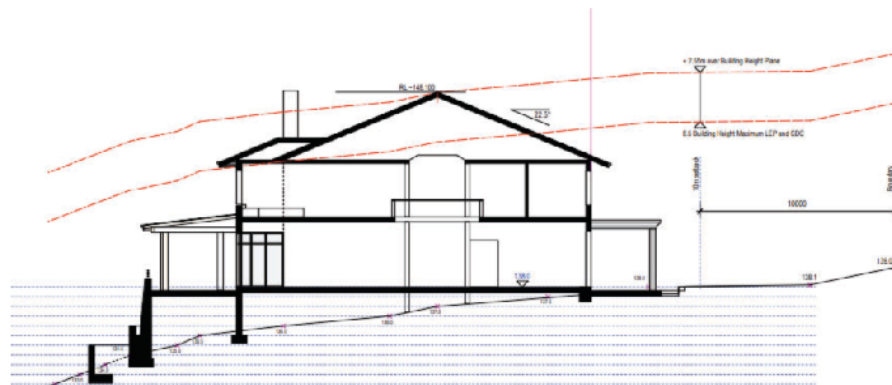


Figure 5 - Section extract showing extent of 8.5 metre building height breach

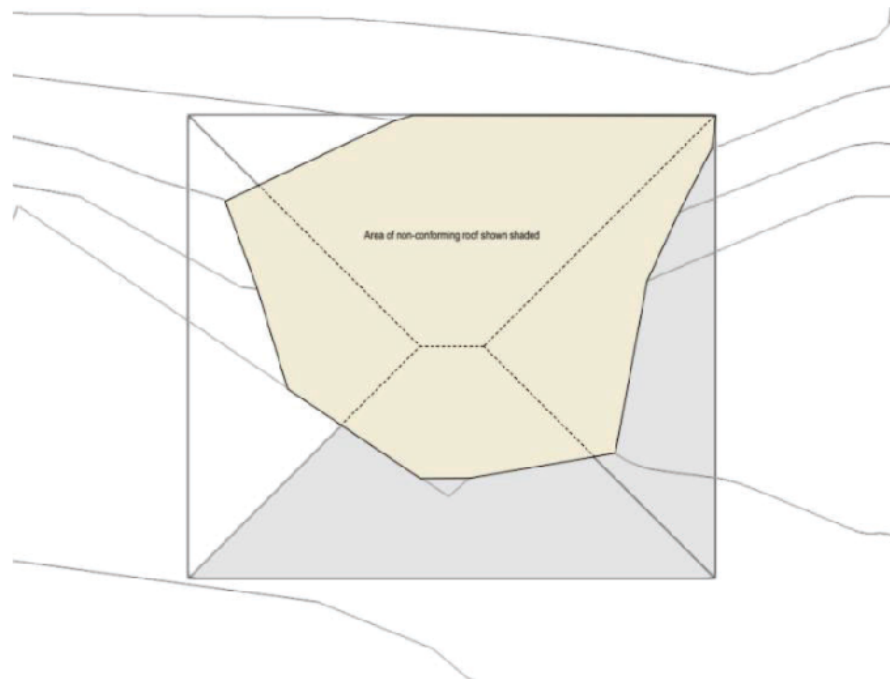


Figure 6 - plan extract showing area of 8.5 metre height building breach

Clause 20 of WLEP 2000 provides for consent to be granted to the proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the desired future character of the locality, the general principles of development control and any relevant State environmental planning policy.

The variation proposed to the 8.5 metre overall building height and 7.2 metre wall height standards are considered acceptable for the following reasons:

- The non-compliant building height elements are located approximately 84 metres from the nearest residential receiver being the property to the west Lot 169 Morgan Road. Given such spatial separation the non-compliant building height elements will not give rise to unacceptably amenity impacts on surrounding development in relation to privacy and solar access as detailed on the accompanying shadow diagrams.
- The non-compliant building height elements will not give rise to unacceptable visual impacts or view loss as demonstrated on the view analysis diagram at Figure 7 below.



Figure 7 - Montage showing view sharing outcome maintained from the upper balcony of the western neighbour

- A complying area of landscaped open space is provided on the site and accordingly a sense of openness is maintained despite the non-compliance.
- The non-compliant roof and wall elements are located approximately 160 metres from Morgan Road and due to the topography of the site will not be discernible in a streetscape context.
- The non-compliant roof and wall elements will not give rise to any adverse amenity or streetscape consequences and do not contravene any general principles of development control.

- The non-compliant building height elements will not contravene any state planning policies.

The resulting development, notwithstanding the building height breaching elements, is consistent with the desired future character of the locality, the general principles of development control and any relevant State environmental planning policy. As such strict compliance is both unreasonable and unnecessary under such circumstances.

ITEM 3.6

**MOD2021/0767 - 9 CALVERT PARADE, NEWPORT & 9
CALVERT PARADE, NEWPORT - MODIFICATION OF
DEVELOPMENT CONSENT DA2018/0217 FOR DEMOLITION
OF EXISTING DWELLING, BOUNDARY ADJUSTMENT AND
CONSTRUCTION OF TWO DWELLINGS**

REPORTING MANAGER Rodney Piggott
TRIM FILE REF 2021/798610
ATTACHMENTS 1 Assessment Report
 2 Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to Mod2021/0767 for Modification of Development Consent DA2018/0217 for demolition of existing dwelling, boundary adjustment and construction of two dwellings on land at Lot 1 DP 1266715, 9 Calvert Parade, Newport, and Lot 2 DP 1266715, 9A Calvert Parade, Newport, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0767
Responsible Officer:	Nick England
Land to be developed (Address):	Lot 2 DP 1266715, 9 A Calvert Parade NEWPORT NSW 2106 Lot 1 DP 1266715, 9 Calvert Parade NEWPORT NSW 2106
Proposed Development:	Modification of Development Consent DA2018/0217 for demolition of existing dwelling, boundary adjustment and construction of two dwellings
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:	Gai Olga Cottee
Applicant:	Rama Architects Pty Ltd
Application Lodged:	08/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	26/10/2021 to 09/11/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

The application is made pursuant to Section 4.55(2) and seeks to modify the original consent, specifically in relation to the two (2) approved dwelling houses.

The application is referred to the Development Determination Panel (DDP) based on the type of modification to the original consent, which was determined by the DDP. The original application was referred to DDP as three (3) submissions were received during notification of that application.

Assessment of the proposal has determined that the proposed modification is substantially the same development as the original consent and no likely amenity impacts will result to adjoining properties. No

submissions were received during the notification period for this application.

PROPOSED DEVELOPMENT IN DETAIL

The application is made pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979 and relates to consent DA2018/0217 for the demolition of an existing dwelling that straddled two (2) existing allotments and the erection of 2 new dwellings on each of these allotments. This consent also adjusted the boundaries of the allotments.

In detail, the proposed modifications seek various internal modifications to the approved dwellings, and external modifications as follows:

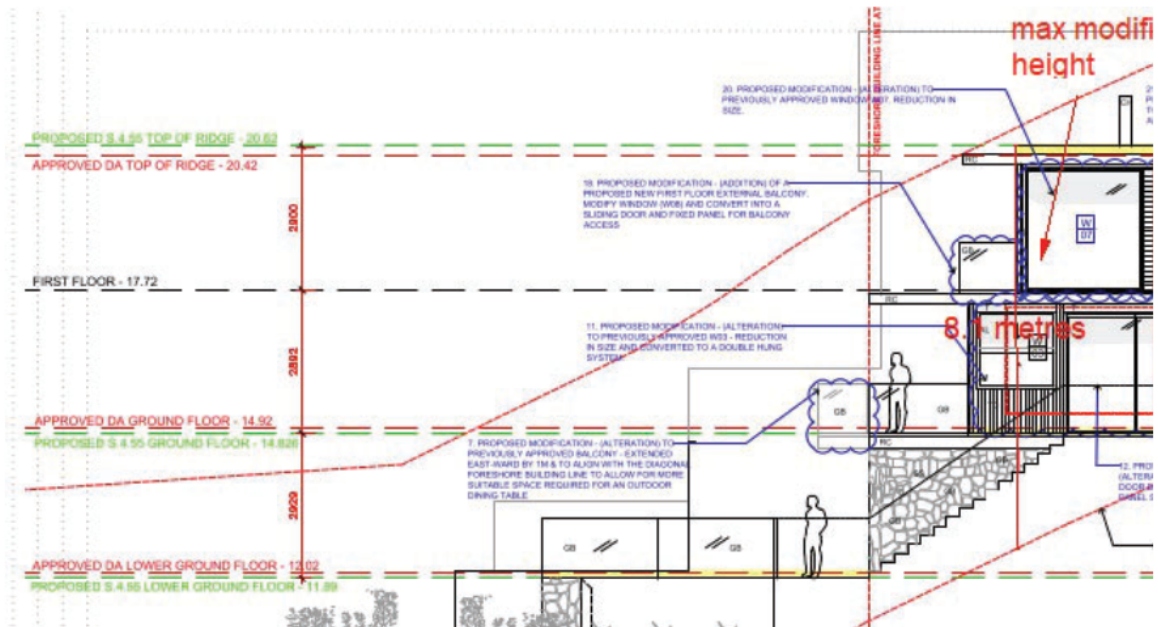
Dwelling at No.9

- Deletion of three (3) skylights and one (1) new skylight;
- relocation of retaining wall adjoining boundary;
- decrease size of pool by increasing its setback from south boundary;
- increase width of ground floor deck by 1.2m;
- new upper level balcony on east elevation, 2.8m² in area;
- minor changes to size and location of windows on west, south and north elevations; and
- increase setback of chimney on south elevation to be flush with dwelling wall.

Dwelling at No.9A

- 200mm increase in height to part of the roof;
- New skylight and re-location of solar panels on roof;
- relocation of retaining wall adjoining driveway;
- new external stair adjoining south boundary;
- lowering the upper ground floor by 94mm;
- lowering the lower ground floor by 130mm;
- minor changes to size and location of windows on west, south and north elevations;
- increasing ground floor deck by 1m at widest point; and
- new 5m² balcony on upper level bedroom, east elevation.

The changes in levels are illustrated below, highlighted in yellow:



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 - C1.5 Visual Privacy

SITE DESCRIPTION

Property Description:	Lot 2 DP 1266715 , 9 A Calvert Parade NEWPORT NSW
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	2106 Lot 1 DP 1266715 , 9 Calvert Parade NEWPORT NSW 2106
Detailed Site Description:	The subject site consists of two (2) allotment located on the eastern side of Calvert Parade, Newport, known as Lot 1 and 2 in DP1266715, or No.9 and 9A Calvert Parade. The site (both lots) are regular in shape with a combined frontage of 23.01m along Calvert Parade and depths varying between 59.91m on the northern boundary and 63.825m on the southern boundary. The site has a total surveyed area of 1,413.3m². The site is located within the E4 Environmental Living zone and is currently vacant, with the two dwelling houses currently under construction on both allotments. The site falls from the street toward the eastern frontage (mean high water mark) adjoining Newport Beach and has a total fall of approximately 10.64m or 15.2% across the whole site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by single dwelling houses exhibiting a range of sizes and architectural styles and eras.

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:

DA2018/0217: Consent granted by the Northern Beaches Development Determination Panel (DDP) for "Demolition of existing dwelling boundary adjustment construction of one (1) new dwelling house on Lot 32 DP 6638 and construction of one (1) new dwelling house on Lot 31 DP 455971" on 27 May 2019. This is the consent that is subject to the proposed modification and was issued on the previous property description of the land.

MOD2020/0330: Modification of Development Consent DA2018/0217, made pursuant to Section 4.55 (1), approved on 19 August 2020. This modification related to minor modifications to the wording of Condition No.49 Survey Plan - Construction Identification: Access and Services.

SC2021/0013: Subdivision Certificate issued by Council on 16 April 2021. This certificate led to the creation of the current property description, Lots 1 and 2 in DP1266715.

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 DA2018/0217, 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	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 DA2018/0217 for the following reasons: • the footprints of both dwellings remain the same as that originally

Section 4.55 (2) - Other Modifications	Comments
	approved; • modifications to windows and other openings relate primarily to minor reconfigurations of their size and location and will result in not result in any significant additional openings; • the modified terraces at ground level have only a minor increase in size; • the new upper level balconies on the east elevation are very minor in size; and • the modifications to the pool on No.9 and the retaining walls will have not net loss or gain in landscaped open space.
(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 DA2018/0217 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, 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.	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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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. <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. <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. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <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. <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.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/10/2021 to 09/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2018/0217 approved for boundary adjustments and the construction of two new dwellings, including swimming pools. The proposed modifications are detailed in the Statement of

Internal Referral Body	Comments
	Environmental Effects. Landscape related modifications include: Dwelling at No. 9 - alteration to approved retaining wall location & landscape levels within boundary; Dwelling at No. 9A - addition of external stairs and the relocation of the previously approved retaining wall to allow for access to the lower ground terrace; and alteration to previously approved retaining wall location & landscape levels within boundary. No changes to the Landscape Plan are proposed, and the conditions of consent under DA2018/0217 remain.
NECC (Coast and Catchments)	The modification application proposes alterations and additions largely within the building footprint approved by consent for DA 2018/0217 for boundary adjustments and construction of two new dwellings with swimming pools at 9 Calvert Parade, Newport. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against the coastal relevant requirements of Pittwater LEP 2014 and Pittwater 21 DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the development. The proposed modifications are considered to be consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Coastal Management) 2018 The proposed development site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this application. On internal assessment, the modification application is considered to satisfy the relevant requirements under clauses 13, 14 and 15 of the CM SEPP. As such, the proposed modifications are considered to comply with the provisions of State Environmental Planning Policy (Coastal Management) 2018. Pittwater LEP 2014 and Pittwater 21 DCP The proposed modifications do not alter the original assessment of coastal relevant matters for DA2018/0217 and no additional or amended conditions in regard to coastal relevant development and planning controls are recommended.
NECC (Development Engineering)	The proposed modifications do not alter the original assessment of the application by Development Engineering. No objection to the proposal with no additional or modified conditions of consent recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

Revised BASIX certificates have been submitted with the application (see Certificate No.885571S_03 and 885573_03 both dated 16 September 2021).

The revised certificates indicates that the proposed modifications will achieve the sustainability targets of this State policy.

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:

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 provisions of this clause was considered in the assessment of the original application. Notwithstanding, a consideration of the proposed modification is such that as the changes will be relatively minor and involve no substantive change to either the footprints or vertical dimensions of the approved dwellings. 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 application was referred to Council's Coast and Catchments Management team for comment. No objection was raised from the team in regard to the proposed modification, hence it can be determined that the application will be consistent with the requirements of Clause 15.

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
Minimum subdivision lot size:	700m ²	708.2 / 708.6m ²	No change	N/A	N/A
Height of Buildings:	8.5 / 10m*	9.32m (No.9) 8.54m (No.9A)	No change No change at highest point 8.1m (maximum height of modified roof) from RL 20.42m to RL 20.62m	N/A N/A N/A	N/A N/A YES

*the original assessment determined that the 10m height limit applied

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes

Detailed Assessment

4.3 Height of buildings

It should be noted that the original assessment considered the 10m height limit to be applicable, as per Clause 4.3 (2)(d) of PLEP 2013. Hence, no written report was needed for the variation to the 8.5m height limit.

An increase is proposed to part of the roof of the No.9A dwelling, at 200mm above the approved maximum height, from RL 20.42m as approved, to RL 20.62m.

However, the maximum height of the dwelling on the eave on the eastern elevation will remain unchanged, at an approved height of 8.54m.

The part of the roof which is subject to the 200mm increase will have a maximum height of 8.1m, which is compliant with both the 8.5m and the 10m development standards.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control No.9	Requirement	Approved	Proposed	Complies
Front building line	6.5m	4.4 - 5.6m	No change	N/A
Rear building line	Foreshore Building Line	Swimming pool within FBL	No change	N/A
Side building line	2.5m (north)	1.1 - 2.5m (dwelling) 0.7m (pool)	No change 1.7m (pool)	N/A Yes
	1m (south)	1m (dwelling) 0.85m (fireplace) 1m (pool) Nil (access stairs)	No change 1m 4.7m No change	N/A Yes Yes N/A
Building envelope	3.5m (north)	Outside envelope, 2.51m	No change	N/A
	3.5m (south)	Outside envelope, 1.65m	No change	N/A
Landscaped area	60%	59.3%	No change	N/A

Built Form Control No.9A	Requirement	Approved	
Front building line	6.5m	4.53 - 5.38m	

Rear building line	Foreshore Building Line	Swimming pool within FBL	No change at ground
Side building line	2.5m (north)	1.1 - 4.4m (dwelling) 1.5m (pool)	
	1m (south)	1 - 2m	Nil (exte
Building envelope	3.5m (north)	Outside envelope (0.04m)	
	3.5m (south)	Outside envelope (2.32m)	
Landscaped area	60%	60%	

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.3 Coastline (Beach) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Yes	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

The increased areas of the terraces on the ground floor are minor and will have a negligible impact on the privacy of adjoining properties.

The new balconies on the upper level are small in area (3 to 10m² in area) and are located a significant distance from adjoining dwelling.

The modifications to the windows on the dwellings involve predominantly minor changes in size and location. On dwelling No.9A the additional floor space over the approved void is minor in area and the modified are not a size and location that will cause adverse impact on the adjoining property to the north.

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

A detailed assessment of the proposal has found that the extent of the proposed modifications are based on mostly internal changes, with only minor changes proposed to the external height, setbacks and fabric of the approved dwellings. Based on this, the proposed modifications are considered to be substantially the same as the approved development.

The likely impacts on adjoining properties of the proposed modifications are considered to be minimal and not adverse on the amenity of any adjoining property. The site is subject to both the Coastline Hazard and Foreshore Building Lines under PLEP 2014, however the proposed modifications will not have the effect of changing or worsening the impact from that established under the original approval.

As a result of this assessment, it is therefore recommended to the DDP that the proposed modification be approved. No special or additional conditions are considered necessary, based on the scope of the proposed modifications.

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. Mod2021/0767 for Modification of Development Consent DA2018/0217 for demolition of existing dwelling, boundary adjustment and construction of two dwellings on land at Lot 2 DP 1266715,9 A Calvert Parade, NEWPORT, Lot 1 DP 1266715,9 Calvert Parade, NEWPORT, 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
9 - DA-000	27 August 2021	Rama
9 - DA-100	29 August 2021	Rama
9 - DA-101	27 August 2021	Rama
9 - DA-102	27 August 2021	Rama
9 - DA-300	27 August 2021	Rama
9 - DA-301	29 August 2021	Rama
9 - DA-302	27 August 2021	Rama
9 - DA-400	27 August 2021	Rama
9 - DA-401	27 August 2021	Rama
9A - DA-000	11 August 2021	Rama
9A - DA-100	11 August 2021	Rama
9A - DA-101	11 August 2021	Rama
9A - DA-102	11 August 2021	Rama
9A - DA-300	11 August 2021	Rama
9A - DA-301	11 August 2021	Rama
9A - DA-302	11 August 2021	Rama
9A - DA-400	11 August 2021	Rama
9A - DA-401	11 August 2021	Rama

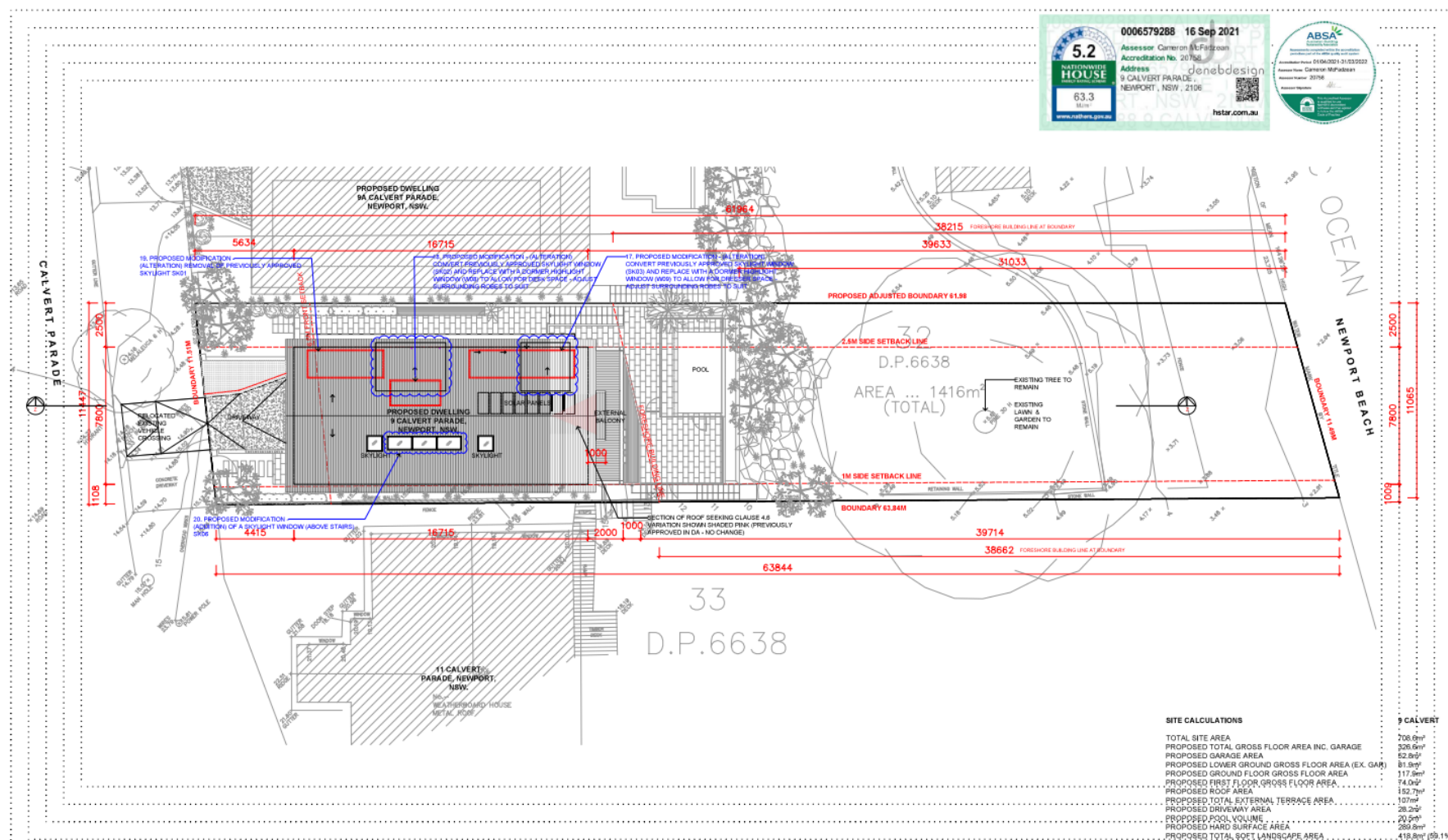
Reports / Documentation – All recommendations and requirements contained within:		
Title / Report No.	Dated	Prepared By
BASIX Certificate No.885732S_03	16 September 2021	Rama Architects Pty Ltd
BASIX Certificate No.885771S_03	16 September 2021	Rama Architects Pty Ltd

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

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

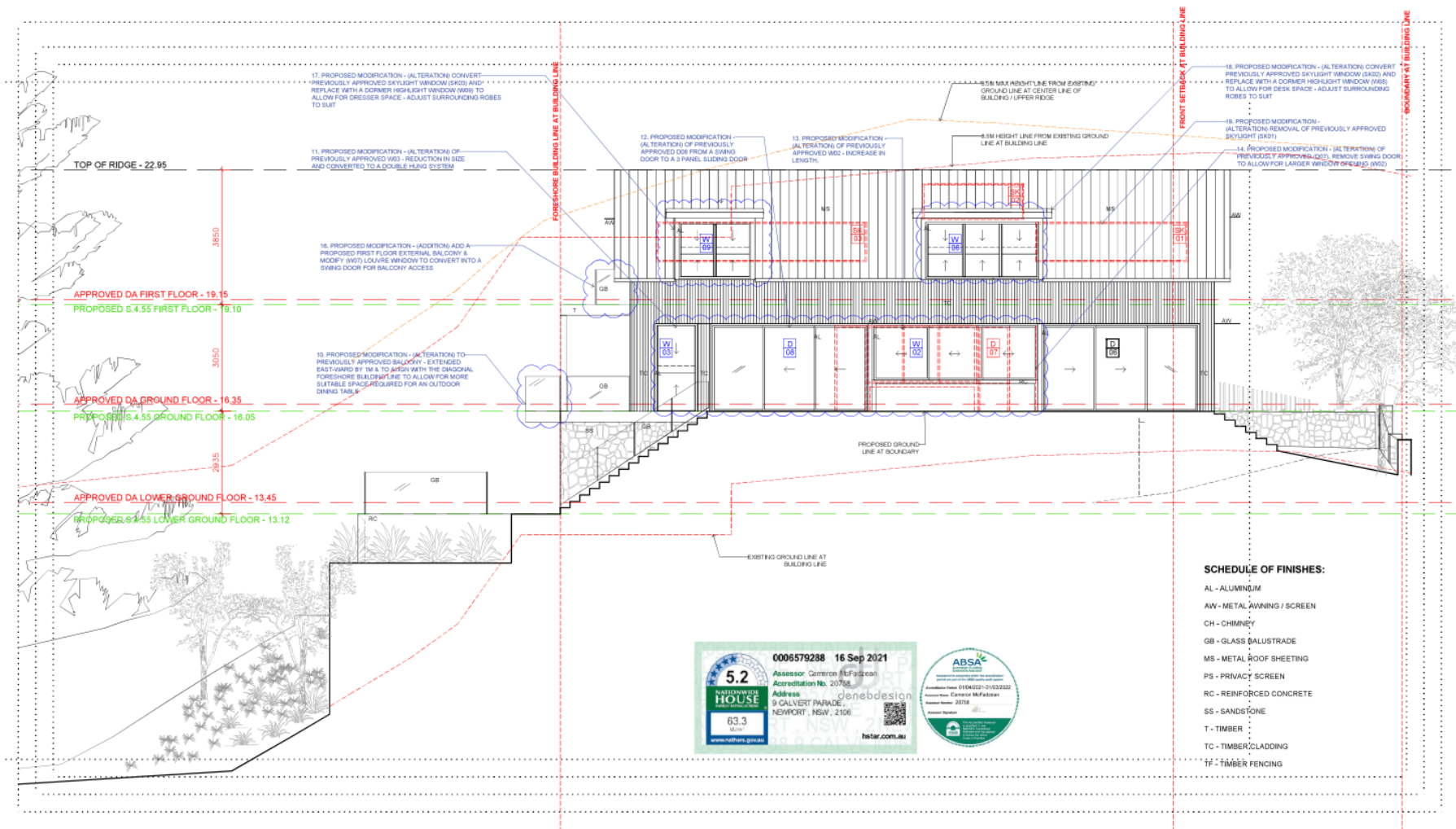
Landscape Plans		
Drawing No.	Dated	Prepared By
9 - DA-500	27 August 2021	Rama
9A - DA-500 Revision A	16 November 2021	Rama

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



SITE PLAN 1:100 @ A1 OR 1:200 @ A3

	LEGEND:  DENOTES EXISTING SPOT LEVEL  DENOTES PROPOSED LEVEL NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION FOR DA APPROVAL ONLY. NOTE: DO NOT SCALE OFF THIS DRAWING NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE NCC NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BAKER REQUIREMENTS	KEY:  DENOTES OUTLINE OF EXISTING BUILDING TO BE DEMOLISHED NOTE: DIMENSIONS TAKEN FROM EXTERNAL EDGE OF WALL TO BOUNDARY	PROJECT: \$4.55 - PROPOSED MODIFICATIONS (ALTERATIONS & ADDITIONS) TO RESIDENTIAL DWELLING CLIENT: GAI COTTREE LOCATION: 9 CALVERT PARADE, NEWPORT	PROJECT STAGE: \$4.55 DRAWING TITLE: 9 CALVERT PARADE SITE PLAN SCALE: 1:200 @ A3	DATE OF ISSUE: 27.08.2021 DRAWING NO. 9 - DA-001 REVISION: -	 R.A.M. Architects 10/100 WILSON STREET NEWPORT VIC 3015 PH: 03 9487 1234 FAX: 03 9487 1235 WWW.RAMARCHITECTS.COM.AU PREPARED BY: R.A.M. ARCHITECTS (Pty) Ltd. CHECKED BY: R.A.M. ARCHITECTS (Pty) Ltd. DRAWN BY: R.A.M. ARCHITECTS (Pty) Ltd. DATE: 27.08.2021
	THIS DOCUMENT IS THE PROPERTY OF R.A.M. ARCHITECTS (Pty) Ltd. AND IS NOT TO BE REPRODUCED OR COPIED IN ANY FORM OR BY ANY MEANS WITHOUT THE WRITTEN PERMISSION OF R.A.M. ARCHITECTS (Pty) Ltd.					1:100 SCALE FOR REFERENCE 1:200 SCALE FOR THE SITE PLAN 1:500 SCALE FOR THE SITE PLAN



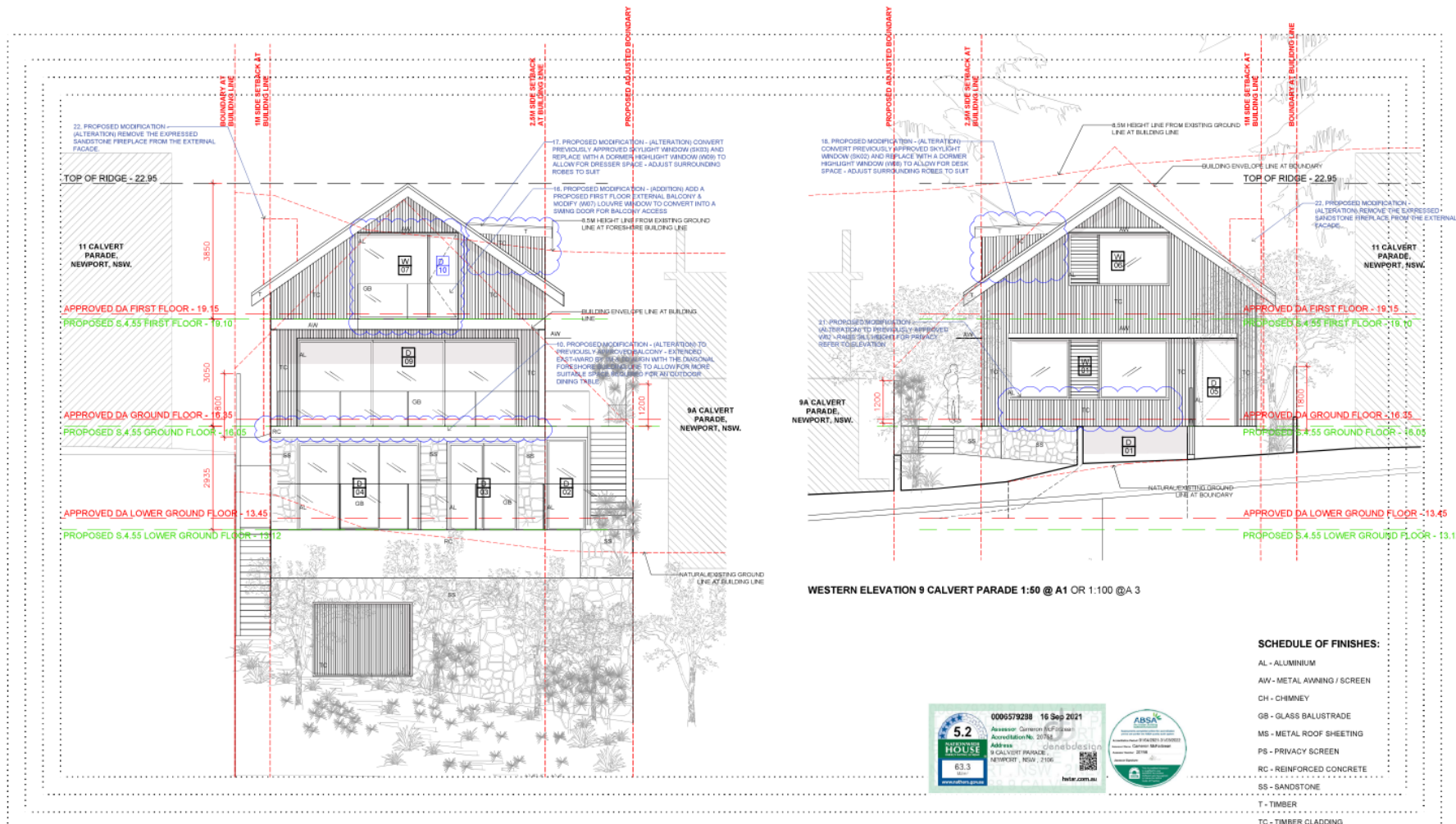
NORTHERN ELEVATION 9 CALVERT PARADE 1:50 @ A1 OR 1:100 @ A3

No.9 CALVERT PDE, NEWPORT

LEGEND: 20.3 DENOTES EXISTING SPOT LEVEL RL 7.10 DENOTES PROPOSED LEVEL NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION. FOR DA APPROVAL ONLY. NOTE: DO NOT SCALE OFF THIS DRAWING. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE NCC. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BASIX REQUIREMENTS.	KEY: --- DENOTES OUTLINE OF EXISTING BUILDING TO BE DEMOLISHED	PROJECT: S4.55 - PROPOSED MODIFICATIONS (ALTERATIONS & ADDITIONS) TO RESIDENTIAL DWELLING CLIENT: GAI COTTIE LOCATION: 9 CALVERT PARADE, NEWPORT	PROJECT STAGE: S4.55 DRAWING TITLE: 9 CALVERT PARADE ELEVATION SHEET 01 SCALE: 1:100 @ A3	DATE OF ISSUE: 27.08.2021 DRAWING NO. 9 - DA-300 REVISION:	rama ARCHITECTURAL DRAWING PROJECT NO. 9 CALVERT PARADE NEWPORT NSW 2106 DATE: 27.08.2021 BY: [Signature] CHECKED BY: [Signature] APPROVED BY: [Signature] PROJECT NO. 9 CALVERT PARADE NEWPORT NSW 2106 DATE: 27.08.2021 BY: [Signature] CHECKED BY: [Signature] APPROVED BY: [Signature]
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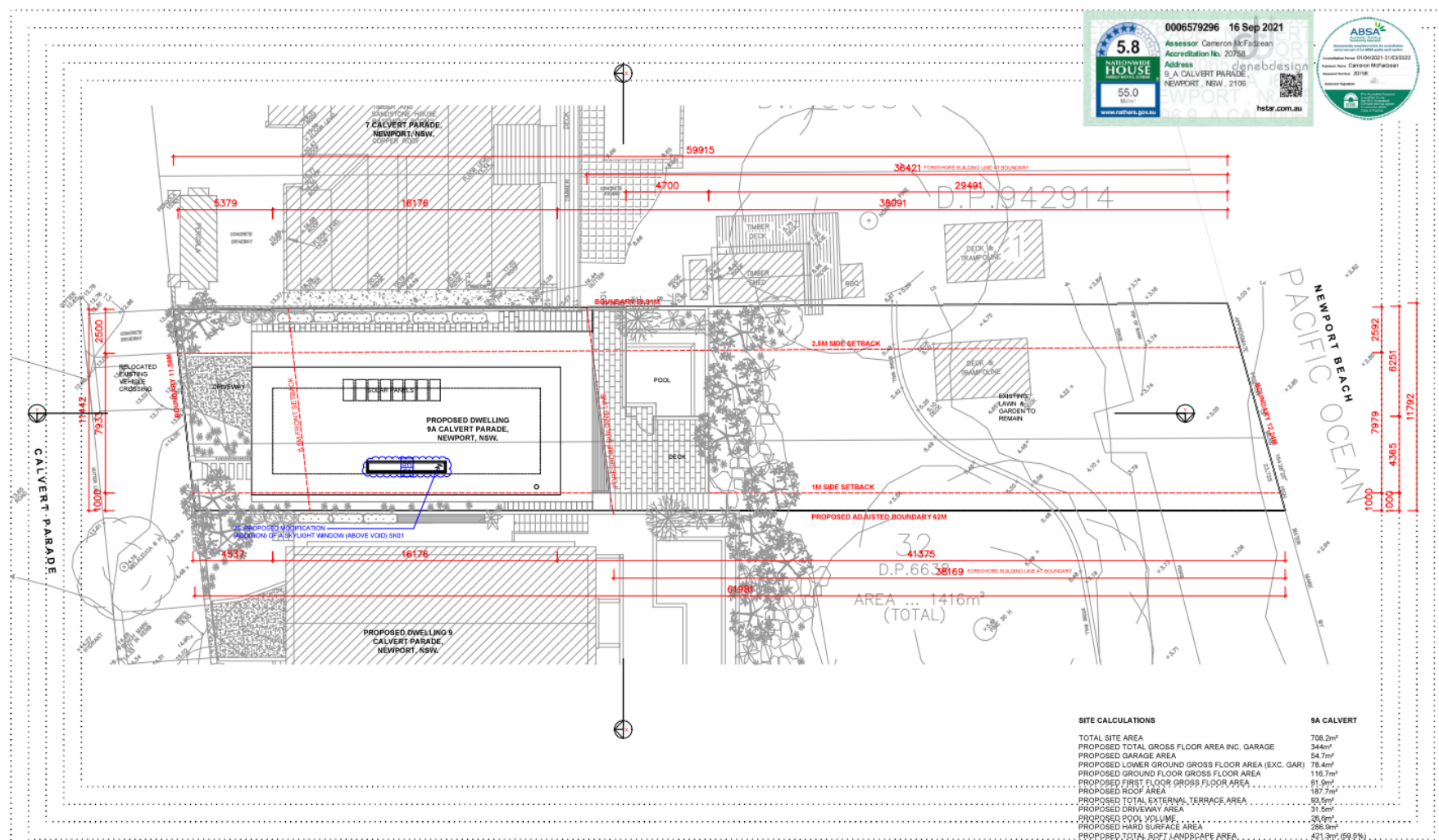


LEGEND:  DENOTES EXISTING SPOT LEVEL  DENOTES PROPOSED LEVEL NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION, FOR DA APPROVAL ONLY. NOTE: DO NOT SCALE OFF THIS DRAWING. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE NCC. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BASIS REQUIREMENTS	KEY:  DENOTES OUTLINE OF EXISTING BUILDING TO BE DEMOLISHED	PROJECT: \$455 - PROPOSED MODIFICATIONS (ALTERATIONS & ADDITIONS) TO RESIDENTIAL DWELLING	PROJECT STAGE: \$4.55	DATE OF ISSUE: 29.07.2021	DRAWING NO.: 9 - DA-301
LOCATION: 9 CALVERT PARADE, NEWPORT	CLIENT: GAI COTTEE	DRAWING TITLE: 9 CALVERT PARADE ELEVATION SHEET 02	SCALE: 1:100 @ A3	REVISION: -	CONTACT: DAVID MCNEILLY 08 9437 1234 david@mcneilly.com.au www.mcneilly.com.au



EASTERN ELEVATION 9 CALVERT PARADE 1:50 @ A1 OR 1:100 @A 3

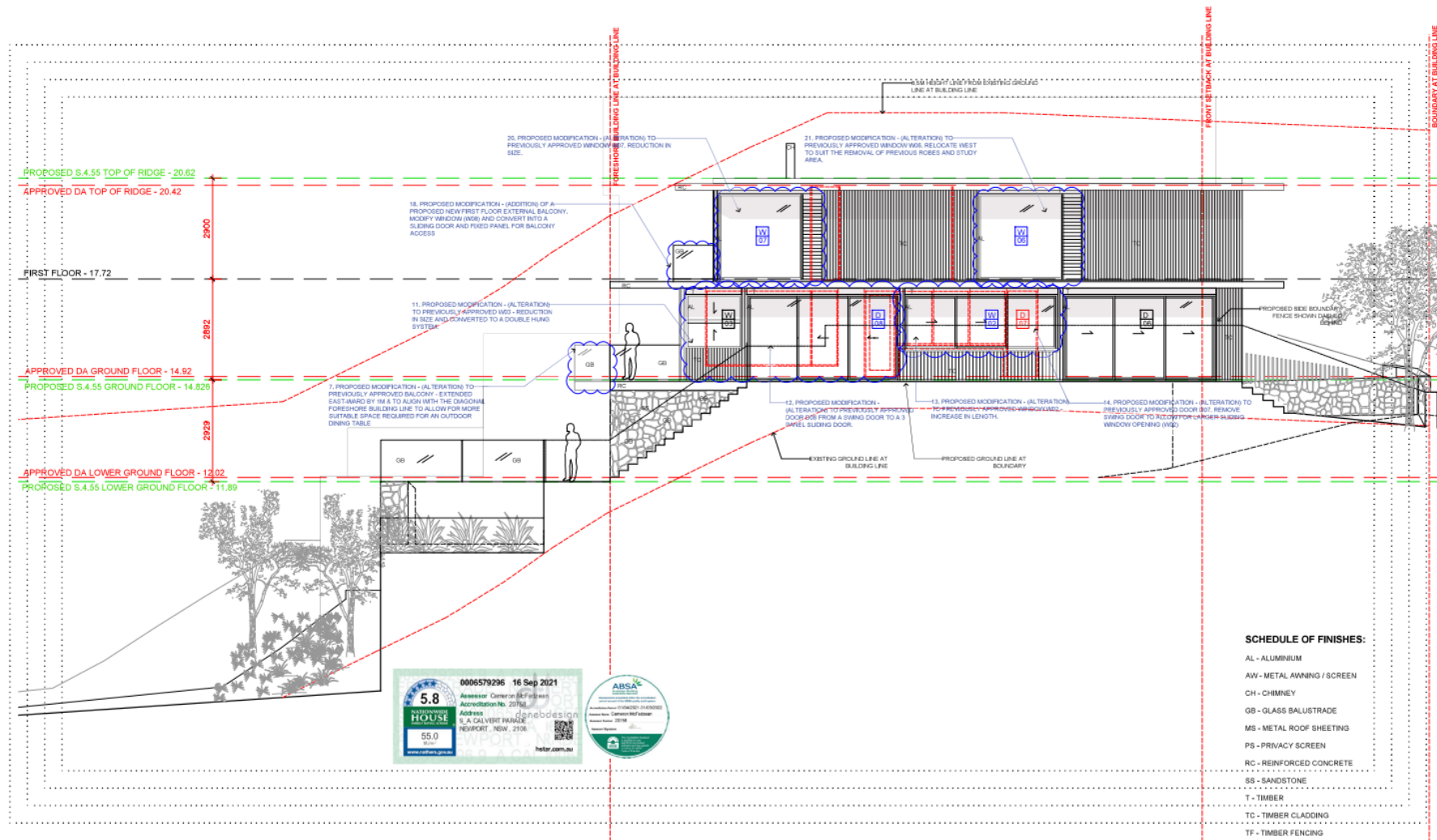
WESTERN ELEVATION 9 CALVERT PARADE 1:50 @ A1 OR 1:100 @A 3



SITE PLAN 1:100 @ A1 OR 1:200 @ A3

No.9A CALVERT PDE, NEWPORT

	LEGEND:  DENOTES EXISTING SPOT LEVEL  DENOTES PROPOSED LEVEL NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION FOR DA APPROVAL ONLY. NOTE: DO NOT SCALE OFF THIS DRAWING NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE 'MCO' NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE DRAIN REQUIREMENTS	KEY:  PROPOSED MODIFICATION TO PREVIOUSLY APPROVED DA2018/0217 NOTE: DIMENSIONS TAKEN FROM EXTERNAL EDGE OF WALL & ALIGNING BOUNDARY LINE	PROJECT: S4.55 - PROPOSED MODIFICATIONS (ALTERATIONS & ADAPTATIONS) TO RESIDENTIAL DWELLING CLIENT: PHIL & MEAGHAN LUCAS LOCATION: 9A CALVERT PARADE, NEWPORT	PROJECT STAGE: S4.55 DRAWING TITLE: 9A CALVERT PARADE SITE PLAN SCALE: 1:200 @ A3	DATE OF ISSUE: 11.08.2021 DRAWING NO. 9A - DA-01 REVISION: -	ram 1/10 CALVERT PARADE, 9A & 10 CALVERT PARADE, NEWPORT VIC 3015 www.ramarchitects.com.au r.architects@ramarchitects.com.au r.architects@ramarchitects.com.au COPYRIGHT © 2021 RAM ARCHITECTS AND ITS LICENSORS ALL RIGHTS RESERVED. NO PART OF THIS PUBLICATION MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION FROM RAM ARCHITECTS.
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NORTHERN ELEVATION 9A CALVERT PARADE @ A1 OR 1:100 @A 3

No.9A CALVERT PDE, NEWPORT

LEGEND:  DENOTES EXISTING SPOT LEVEL  DENOTES PROPOSED LEVEL NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION OR DA APPROVAL ONLY. NOTE: DO NOT SCALE OFF THIS DRAWING. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE NCC. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BASIX REQUIREMENTS	KEY: ----- PROPOSED MODIFICATION TO PREVIOUSLY APPROVED DA20180217	PROJECT: S4.55 - PROPOSED MODIFICATIONS (ALTERATIONS & ADDITIONS) TO RESIDENTIAL DWELLING CLIENT: PHIL & MEAGHAN LUCAS LOCATION: 9A CALVERT PARADE, NEWPORT	PROJECT STAGE: S 4.55 DRAWING TITLE: 9A CALVERT PARADE ELEVATION SHEET 01 SCALE: 1:100 @ A3	DATE OF ISSUE: 11.08.2021 DRAWING NO. 9A - DA-300 REVISION: -	ram ALBERT STREET NEWPORT VIC 3015 03 9479 0000 www.ram.com.au E: DA@RAM.COM.AU P: 9A CALVERT PARADE NEWPORT VIC 3015 RAM ARCHITECTS PTY LTD A: 1/100 CALVERT PARADE NEWPORT VIC 3015 CONSISTENT OF SEALS AND SIGNED CERTIFYING OFFICER'S SIGNATURE AND SEAL THIS DOCUMENT IS VALID FOR 12 MONTHS FROM DATE OF ISSUING THESE SEALS
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LEGEND: DENOTES EXISTING SPOT LEVEL DENOTES PROPOSED LEVEL NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION FOR DA APPROVAL ONLY. NOTE: DO NOT SCALE OFF THIS DRAWING NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE NCC NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BASIX REQUIREMENTS	KEY: ----- PROPOSED MODIFICATION TO PREVIOUSLY APPROVED DA20180217	PROJECT: S4.55 - PROPOSED MODIFICATIONS (ALTERATIONS & ADDITIONS) TO RESIDENTIAL DWELLING CLIENT: PHIL & MEAGHAN LUCAS LOCATION: BA CALVERT PARADE, NEWPORT	PROJECT STAGE: S4.55 DRAWING TITLE: BA CALVERT PARADE ELEVATION SHEET 02 SCALE: 1:100 @ A3	DATE OF ISSUE: 11.08.2021 DRAWING NO. BA - DA-301 REVISION: -	 General Manager David Wilson Sales & Marketing Lisa Wilson E: D.WILSON@RAMA.COM.AU M: 08 9478 1234 L: 08 9478 1237 P: 08 9478 1234 F: 08 9478 1237 W: www.ramadesign.com.au I: info@ramadesign.com.au
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