AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 8 DECEMBER 2021



Ashleigh Sherry
Manager Business System and Administration

northern beaches council

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 8 December 2021 via teleconference Commencing at 10.00am

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Development Determination Panel held 26 November 2021

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS 5

3.1 DA2021/2022 - 15 Mulgowrie Crescent BALGOWLAH HEIGHTS - Alterations and additions to a dwelling house 5

3.2 DA2021/1113 - 43 Queenscliff Road QUEENSCLIFF - Demolition works and construction of a dwelling house 37

3.3 DA2021/1140 - 72 Carrington Parade CURL CURL - Demolition works and construction of a dwelling house 85

3.4 DA2021/0504 - 1 Undercliff Road FRESHWATER - Demolition works and construction of a dwelling on lot 1 and 2 127

3.5 DA2021/0672 - 869 Pittwater Road COLLAROY - Alterations and additions to a dwelling house 166

3.6 DA2021/1863 - 24 Capua Place AVALON BEACH - Alterations and additions to a home office for use as a secondary dwelling 201

3.7 REV2021/0035 - 114 Whale Beach Road WHALE BEACH - Review of Determination of Application DA2020/1186 for alterations and additions to a dwelling house 247

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 26 NOVEMBER 2021

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 26 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	**DA2021/2022 - 15 MULGOWRIE CRESCENT BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**REBECCA ENGLUND**
TRIM FILE REF	**2021/835151**
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 floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 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 DA2021/2022 for alterations and additions to a dwelling house on land at Lot 4 DP 758044, 15 Mulgowrie Crescent, Balgowlah Heights, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2022

Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 4 DP 758044, 15 Mulgowrie Crescent BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Lucy Alison D'Almeida
Applicant:	Simon Rosewell Pty Ltd

Application Lodged:	29/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	10/11/2021 to 24/11/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 23.63%
Recommendation:	Approval

Estimated Cost of Works:	$ 200,000.00

EXECUTIVE SUMMARY

The proposal is for the alterations and additions to the existing dwelling house

The proposal does not comply with the floor space ratio (FSR) development standard of 0.4:1 (245.16m²) and proposes a FSR of 0.49:1 (302.6m²) that represents a 23.43% variation. It is noted that the existing FSR is 0.48:1 (293.6m²) and the proposal represents an increase of 9m² to the existing FSR. As the variation to the floor space ratio development standard is greater than 10%, the application is referred to the Development Determination Panel for determination.

The proposed development was notified and no submissions were received.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the

application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

Ground Floor

- Remove existing pillar to portico and install 4 new similar pillars;
- Install high level window to bedroom 3 and bedroom 4;
- Addition of operable screens integrated within portico to bedroom 2;

First Floor

- Additional 9m^2 to northern edge of kitchen;
- Change kitchen windows to doors;
- Extend existing balcony with integrated planter and operable privacy screening;
- Create gable to existing roof with new 'flat' awning roof over balcony; and
- Replacement of existing glazing of windows on western elevation to external louvres.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

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

SITE DESCRIPTION

Property Description:	Lot 4 DP 758044 , 15 Mulgowrie Crescent BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Mulgowrie Crescent. The site is regular in shape with a frontage of 13.975m along Mulgowrie Crescent and a maximum depth of 36.575m. The site has a surveyed area of 612.9m². The site is located within the R2 Low Density Residential from MLEP 2013 and accommodates a dwelling house and swimming pool. The site slopes from the northern front boundary downwards to the southern rear boundary, with a fall of approximately 3 metres. The site contains maintained gardens, hedges, lawn areas and trees. There are no details of any threatened species on the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwellings of a similar size varying in architectural style and design.

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.156/09 for Partial demolition, alterations and additions to the existing dwelling including a new upper storey.
Approved on 19 November 2009.

Final Occupation Certificate for Partial demolition, alterations and additions to the existing dwelling including a new upper storey.
Dated 13 June 2012 by External Private Certifying Authority.

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)(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)	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. Clause 50(1A) 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. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the

Section 4.15 Matters for Consideration	Comments
	consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
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 10/11/2021 to 24/11/2021 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

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 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.A434043 dated 1 October 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an

application for modification of consent) for any development carried out:

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

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.12m	-	Yes
Floor Space Ratio	FSR: 0.4:1 (245.16m^2)	FSR: 0.49:1 (302.6m^2) *Existing FSR: 0.48:1 (293.6m^2)*	23.43% (57.44m^2)	**No**

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	N/A
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	N/A
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (245.16m^2)
Proposed:	0.49:1 (302.6m^2)
Percentage variation to requirement:	23.43%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:
Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is

proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

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

Section 1.3 of the EP&A 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 minor increase to FSR of 0.015:1 is not readily discernible as it is within the existing envelope, over existing paved area and integrated with the existing architecture.*
- *The relative form, siting and scale remain unchanged and remains commensurate with neighbouring developments within this suburb.*
- *The works retain and enhance the landscaped setting and whilst only partially visible from the street add to the quality of the built form and streetscape.*
- *The proposed works are very minor but afford a necessary increase in amenity (the fundamental need to create privacy to living area and bedrooms whilst retaining solar access and ventilation as well as addressing environmental performance and utility of space), whilst preserving neighbouring views and solar access; the design creates no adverse environmental conditions.*

The proposal generally retains the existing building envelope and is located above existing paved areas. The proposal is consistent with the locality and neighbouring developments within the vicinity. It is agreed that the additional increase of gross floor area on the first floor results in a minor increase. The existing FSR is 0.48:1 (293.6m^2) and the proposed is 0.49:1 (302.6m^2) resulting in an increase of 0.015:1 (9m^2). In terms of its strict compliance with this development standard it would not result in a net benefit to the desired future character of the locality, as the proposal is considered to be an appropriate design to preserve the neighbourhood amenity. Overall, the requested variation is relatively minor that is suitable to provide greater amenity whilst preserving the neighbourhood character within a low density residential setting.

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).

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

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

Clause 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 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:
The bulk and scale of the development is consistent with the existing and future desired streetscape character. The proposed addition of 9m2 to extend the kitchen on the first floor is within the existing building envelope and located above existing hard paved areas. The extension of the kitchen is in line with the existing side setbacks and is a situated below the maximum building height development standard, that is consistent with the scale of surrounding low-density dwelling houses. The proposed balcony accessible from the kitchen is integrated with planter boxes along the perimeter to provide visual screening and softening of the built form when viewed from the streetscape. Overall, the proposal has been appropriately designed to minimise the bulk and scale that is consistent with the existing and desired future streetscape character.

It is considered that the development satisfies this objective.

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

Comment:
As outlined above, the proposal has been designed to manage the building bulk. Notably, the proposal does not result in the removal of landscape features and provides additional landscape elements such as the planter boxes. The addition of the planter boxes softens the built form providing an enhanced landscape setting. Overall, the development does not anticipate any unreasonable impacts to landscape and townscape features.

It is considered that the development satisfies this objective.

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

Comment:
The proposal maintains an appropriate visual relationship between the existing dwelling and proposed addition. The additional gross floor area of 9m2 maintains the general appearance of the dwelling house and does not protrude beyond the existing front building setback of the study on the first floor. The proposed balcony is located forward of the existing dwelling house, however this structure is compliant with the front building line and is located 6.3m from the front boundary. Additionally, the proposed balcony provides planter boxes and screening devices to provide an appropriate visual relationship that enhances the landscape character of the area.

It is considered that the development satisfies this objective.

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

Comment:
The proposed development will not unreasonably impact the use or enjoyment of adjoining land or the public domain.

It is considered that the development satisfies this objective.

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

Comment:
This objective is not applicable as the site is not located within a business zone.

Zone objectives

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

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

  Comment:
  The additional gross floor area proposed with the extension of the kitchen provides greater area to satisfy the housing needs and functionality of the dwelling for the residents. Furthermore, the proposal provides a balcony located off the kitchen area to provide greater enjoyment of the dwelling. The balcony has been designed to include planter boxes and privacy screens to ensure no unreasonable impacts to amenity for residents and neighbouring properties. Overall, the proposal retains the low density residential character of the locality.

  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:
  There is no change to the existing residential land use.

  It is considered that the development satisfies this objective.

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

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

Clause 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, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the floor space ratio development standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 612.9m^2	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.1.1 Residential Density and Dwelling Size	950m^2 of site area required per dwelling	unaltered	-	Yes
4.1.2.1 Wall Height	E: 6.5m (based on no gradient)	5.6m	-	Yes
	W: 7.7m (based on gradient 1:5)	7.2m	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.1m	-	Yes
	Parapet Height: 0.6m	0.3m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	6m	6.3m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 1.87m (based on 1/3 wall height)	1.6m	14.44% (0.27m)	**No**
	W: 2.4m (based on 1/3 wall height)	2.3m	4.17% (0.1m)	**No**
	Windows: 3m	2.5m	16.67% (0.5m)	**No**
4.1.4.4 Rear Setbacks	8m	unaltered	-	Yes
4.1.5.3 Private Open Space	18m^2	>18m^2	-	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	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 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the MLEP 2013.

In conclusion, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the variation.

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

Description of non-compliance

The proposed works result in a numerical non-compliance to the eastern and western side setbacks. The proposed setback to the eastern side is 1.6m, resulting in a variation of 14.44% to the required 1.87m based on 1/3 wall height. The proposed setback to the western side is 2.3m, resulting in a variation of 4.17% to the required 2.4m based on 1/3 wall height.

However, it is important to note that the proposal is an extension of the existing side boundaries on both the eastern and western sides.

Additionally, the proposed windows located along the western elevation are 2.5m from the side boundary, resulting in a 16.67% (0.5m) variation to the 3 metre requirement.

Merit consideration:

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

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

Comment:
The proposed works are sited approximately 6.3m from the street front, providing a compliant street front setback. The proposed works are consistent with the spatial proportions of the street and landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:
The proposed work include operable privacy screens and operable external louvres to provide privacy along the front and side setbacks. The proposed works maintains equitable access to light, sunshine and air movement for residents and adjoining sites. The proposed side setbacks are consistent with the existing side setbacks and therefore there are no unreasonable impacts to views and vistas from public and private spaces. Additionally, the side setbacks are an extension of the existing providing a continued rhythm of spaces and sufficient separation between buildings. As the works are distanced from the street, there are no changes to the existing traffic conditions and visibility.

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

Comment:
The proposed setback breach is considered to be acceptable given the existing side setbacks.

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 proposed works do not result in the removal of any vegetation. The proposed works enhance the existing vegetation by including planter boxes along the first floor balcony edges.

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

Comment:
The subject site is not located on bush fire prone land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013. Accordingly, this assessment finds that the proposal is supportable, 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 $ 1,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of $ 200,000.

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
- 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

Council is satisfied that:

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

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

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

This report provides a detailed assessment of the Development Application for alterations and additions to a dwelling house at No.15 Mulgowrie Crescent, Balgowlah Heights.

Public Exhibition
The public exhibition of the application resulted in no submissions.

Assessment of the Proposal
The assessment of the proposed development against the provisions of MLEP 2013 found that the proposal does not comply with the 'Floor Space Ratio' Development Standard under the MLEP 2013 which permits a floor space ratio of 0.4:1 within the R2 Low Density Residential.

In this case, the proposed Floor Space Ratio (FSR) is a variation of 23.43%. However, it is important to note the existing FSR is 0.48:1 (293.6m^2) and the proposed FSR is 0.49:1 (302.6m^2) that results in an increase of 9m^2.

The applicant has provided sufficient justification for the exception to the development standard in that strict compliance with the development standard would impact the performance, quality and enjoyable amenity of the dwelling house. Additionally, the departure from the development standard does not result in any unreasonable impacts to surrounding residential properties.

In addition, the assessment of the proposed development against the provisions of the Manly DCP 2013 has found that the proposal does not comply with the side setback controls. However, given the side setback is a continuation of the existing dwelling house the side setback controls have been assessed concluding that the variation is supportable due to the consistency with the objectives of the side setback controls.

In summary, the proposal is recommended for approval as there will not be any unreasonable amenity impacts to adjoining properties and the proposal is consistent with existing and desired future character of the locality.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2021/2022 for Alterations and additions to a dwelling house on land at Lot 4 DP 758044, 15 Mulgowrie Crescent, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
Site Plan - DA101, RevA	12 September 2021	Simon Rosewell Pty Ltd
Lower Ground Floor Plan - DA102, RevA	12 September 2021	Simon Rosewell Pty Ltd
Ground Floor Plan - DA103, RevA	12 July 2021	Simon Rosewell Pty Ltd
First Floor Plan - DA104, RevA	12 July 2021	Simon Rosewell Pty Ltd
Demolition Plan - DA105, RevA	12 September 2021	Simon Rosewell Pty Ltd
Elevations 1 (Northern & Western) - DA201, RevA	17 September 2021	Simon Rosewell Pty Ltd
Elevations 2 (Southern & Eastern) - DA202, RevA	17 September 2021	Simon Rosewell Pty Ltd
Schedule of Finishes - DA203, RevA	17 September 2021	Simon Rosewell Pty Ltd
Section - DA301, RevA	17 September 2021	Simon Rosewell Pty Ltd

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
Stormwater Management Plan - DA106, RevA	12 September 2021	Simon Rosewell Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (No.A434043)	1 October 2021	Simon Rosewell 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:

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	20 September 2021	Simon Rosewell Pty Ltd

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

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

2. **Prescribed Conditions**

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

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under

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

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not

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

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of $1,000.00 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 $200,000.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

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

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

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

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

Reason: To ensure satisfactory management of stormwater.

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

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

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

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

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

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate

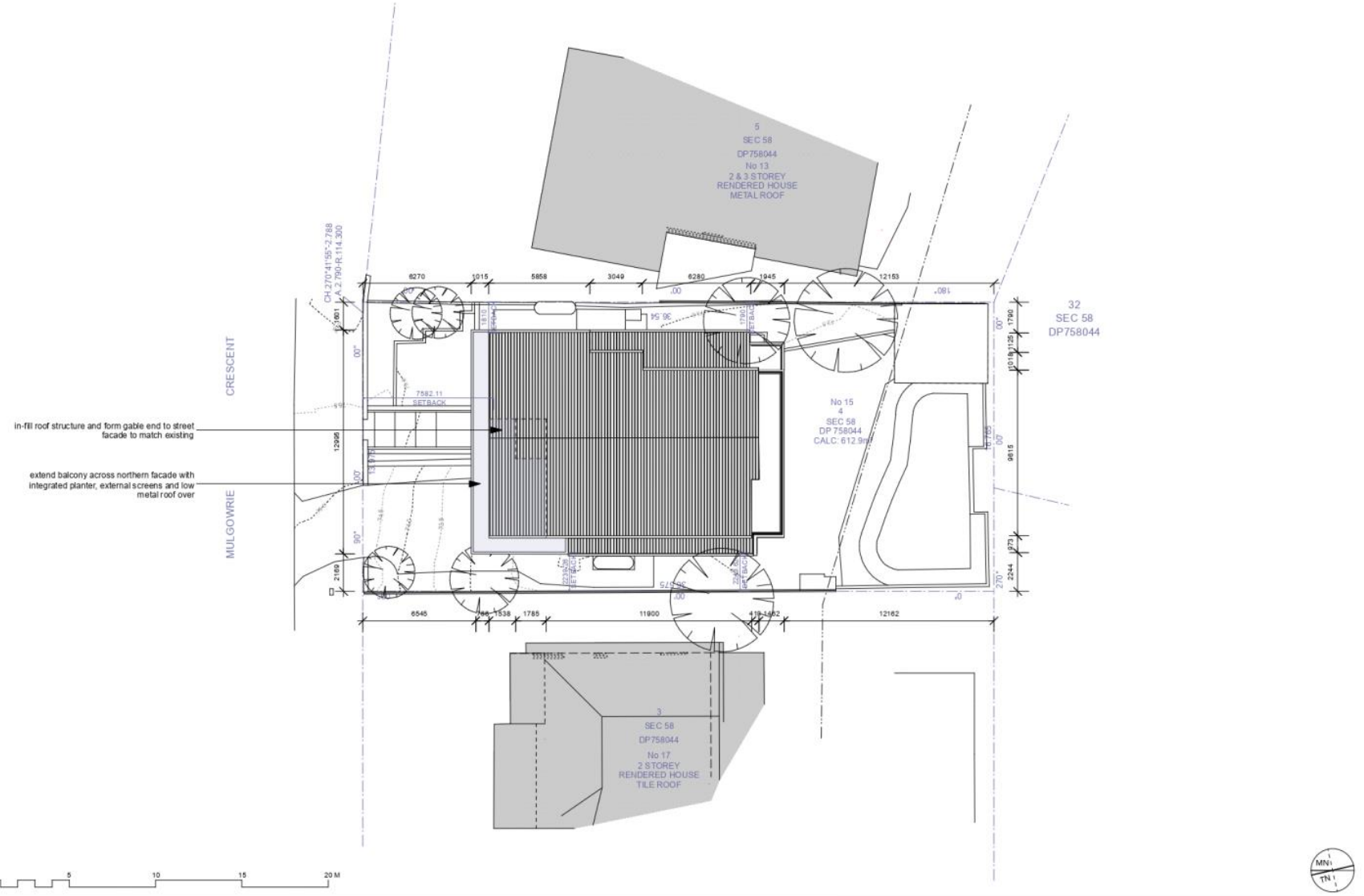
prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

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

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



ALTERATIONS & ADDITIONS
15 MULGOWRIE CRESCENT BALGOWLAH HEIGHTS
R & L D'ALMEIDA

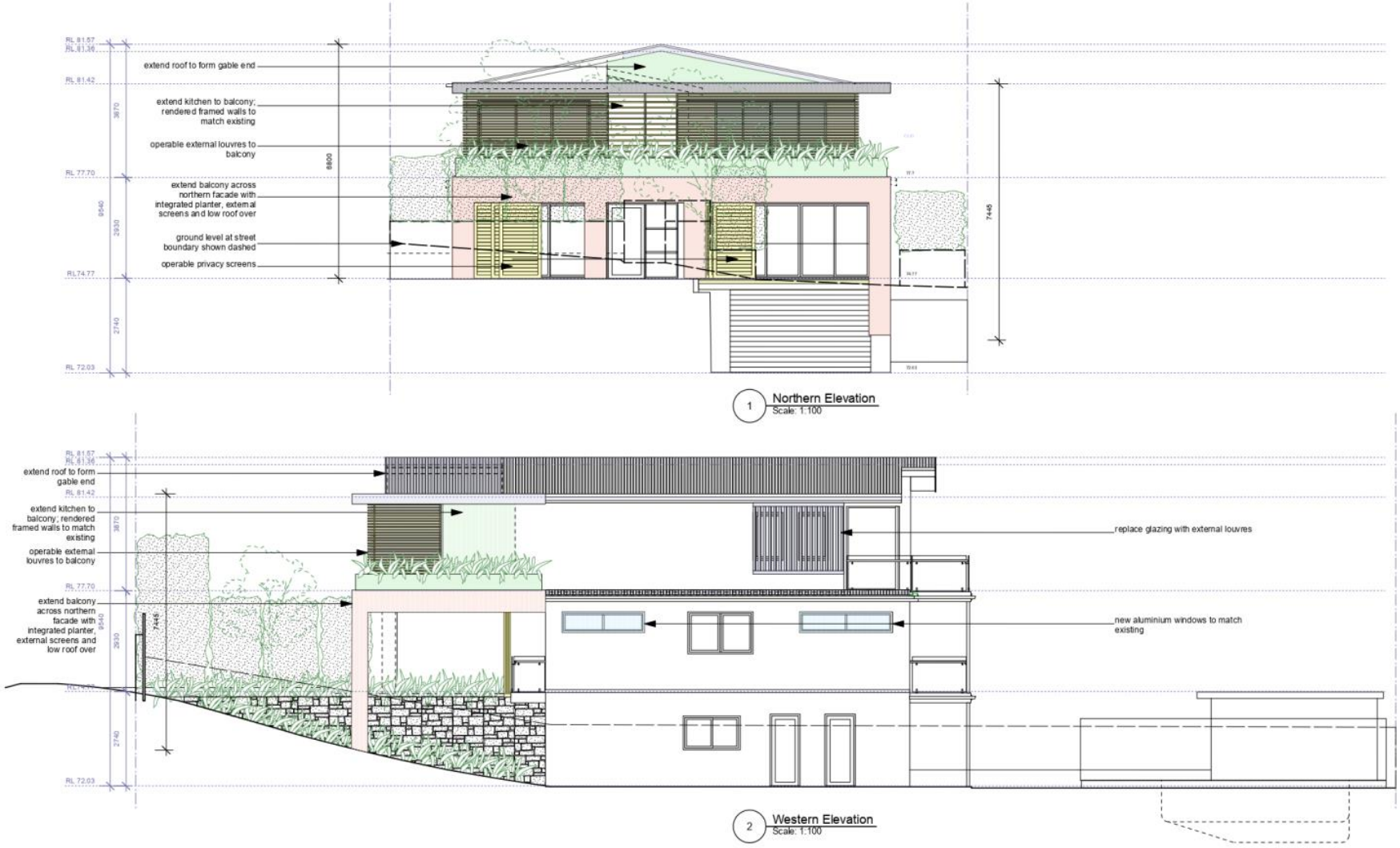
JOB NO	DWG NO	AMENDMENT	TITLE	SCALE	DATE PRINTED
2111	DA101	A	SITE PLAN	1:200 AT A3	12.09.21

SIMON ROSEWELL PTY LTD architecture • design • project management

- Dimensions in millimetres.
- Confirm all dimensions on site prior to commencing work.
- Use figured dimensions only.
- Do not scale.
- If discrepency exists notify architect.
- If in doubt ask.

Comply with relevant Authorities requirements
Comply with the Building Code of Australia
Comply with all relevant Australian Standards

© Copyright in all documents and drawings prepared by the architect and in any works executed from those documents and drawings shall remain the property of the architect or on creation vest with the architect



ALTERATIONS & ADDITIONS
15 MULGOWRIE CRESCENT BLAGOWLAH HEIGHTS
R & L D'ALMEIDA

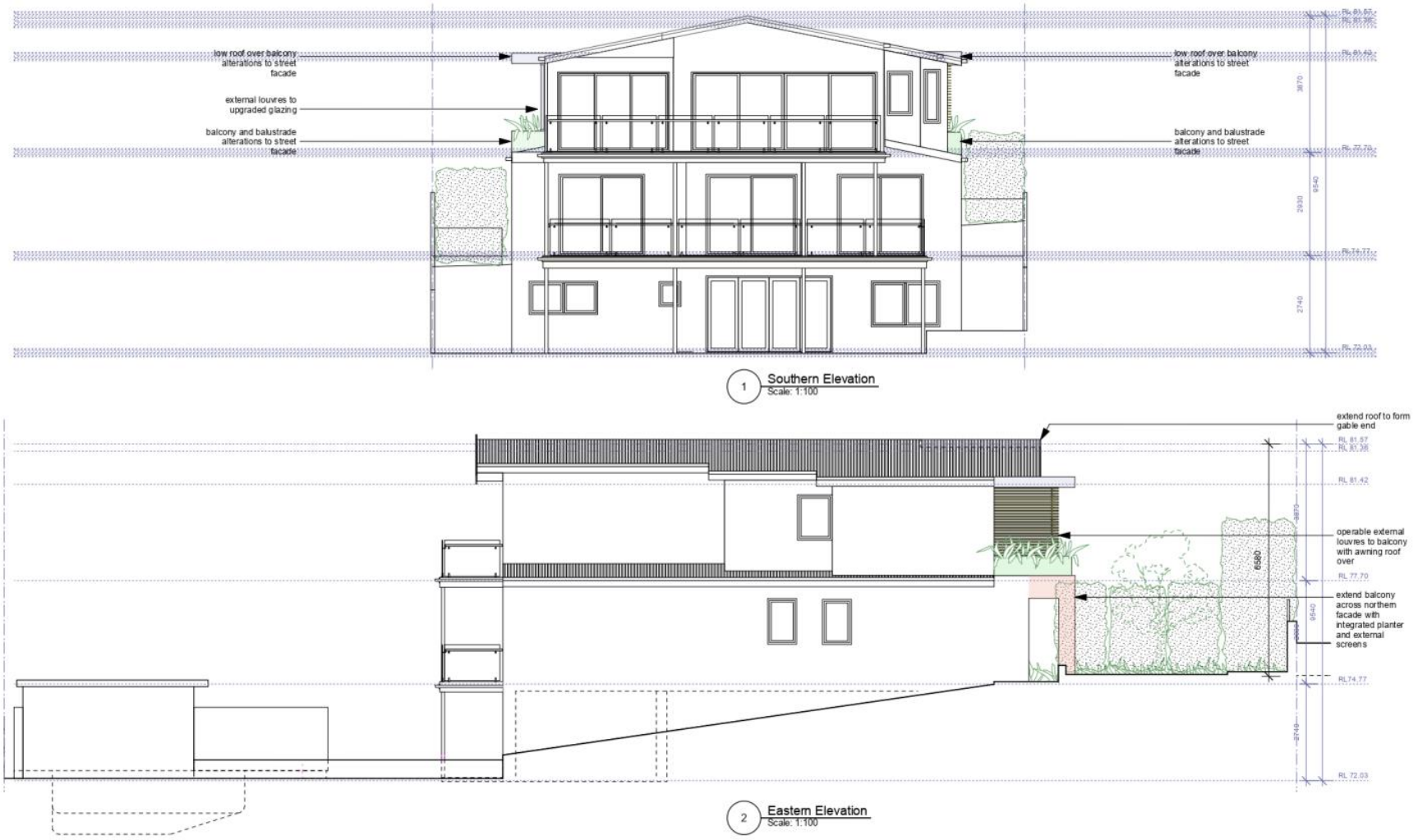
JOB NO	DWG NO	AMENDMENT	TITLE	SCALE	DATE PRINTED
2111	DA201	A	ELEVATIONS 1	1:100 AT A3	17.09.21

SIMON ROSEWELL PTY LTD architecture • design • project management

- Dimensions in millimetres.
- Confirm all dimensions on site prior to commencing work.
- Use figured dimensions only.
- Do not scale.
- If discrepancy exists notify architect.
- If in doubt ask.

Comply with relevant Authorities requirements
Comply with the Building Code of Australia
Comply with all relevant Australian Standards

© Copyright in all documents and drawings prepared by the architect and in any works executed from those documents and drawings shall remain the property of the architect or on creation vest with the architect



ALTERATIONS & ADDITIONS
15 MULGOWRIE CRESCENT BLAGOWLAH HEIGHTS
R & L D'ALMEIDA

JOB NO	DWG NO	AMENDMENT	TITLE	SCALE	DATE PRINTED
2111	DA202	A	ELEVATIONS 2	1:100 AT A3	17.09.21

SIMON ROSEWELL PTY LTD architecture • design • project management

- Dimensions in millimetres.
- Confirm all dimensions on site prior to commencing work.
- Use figured dimensions only.
- Do not scale.
- If discrepency exists notify architect.
- If in doubt ask.

Comply with relevant Authorities requirements
Comply with the Building Code of Australia
Comply with all relevant Australian Standards

© Copyright in all documents and drawings prepared by the architect and in any works executed from those documents and drawings shall remain the property of the architect or on creation vest with the architect

S I M O N R O S E W E L L

a r c h i t e c t u r e • d e s i g n • p r o j e c t m a n a g e m e n t

15 MULGOWRIE CRESCENT BALGOWLAH HEIGHTS

LEP CLAUSE 4.6 - APPLICATION TO VARY A DEVELOPMENT STANDARD

This application is to be read in conjunction with the Development Application for alterations and additions to this property as per EP& A Regulation 2000

Item 1 **What is the name of the environmental planning instrument that applies to the land?**

Manly LEP 2013

Item 2 **What is the zoning of the land?**

the site is zoned R2 Low Density Residential

Item 3 **what are the objectives of the zone?**

Objectives of zone:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Item 4 **what is the development standard being varied?**

Floor Space Ratio

Item 5 **under what clause is the development standard listed in the environmental planning instrument.**

4.4

Item 6 **what are the objectives of the development standard?**

The objectives of this clause are as follows:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

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

Item 7 **what is the numeric value of the development standard in environmental planning instrument?**

0.4:1

Item 8 **what is the numeric value of the development standard in your development application?**

0.015:1 of FSR - the proposed additional GFA is only 9m².

Item 9 **what is the percentage variation?**

the proposal only represents a 3% variation to the existing FSR

Item 10 **How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

The proposed works have been carefully designed to address specific inadequate environmental aspects of the current dwelling whilst enhancing the architectural quality and performance.

The proposed works are very minor but afford a necessary increase in amenity (the fundamental need to create privacy to living area and bedrooms whilst retaining solar access and ventilation as well as addressing environmental performance and utility of space), whilst preserving neighbouring views and solar access; the design creates no adverse environmental conditions. This is a stated objective which is satisfied.

The relative form, siting and scale remain unchanged and remains commensurate with neighbouring developments within this suburb. This is a stated objective which is satisfied.

The works retain and enhance the landscaped setting and whilst only partially visible from the street add to the quality of the built form and streetscape.

The sloping sites typically have basement levels housing garages and connections to the rear garden effectively increasing FSR requirements over what is considered a low value for a 612.9m² lot. There is provision in the DCP for sloping site conditions adding to building height and resultant FSR.

The minor increase to FSR of 0.015:1 is not readily discernable as it is within the existing envelope, over existing paved area and integrated with the existing architecture whilst refining the design and fundamentally improving functionality and enjoyment of the dwelling.

Item 11 **how would strict compliance hinder the attainment of the objects specified in Section 3 above**

Strict compliance will seriously impact the performance, quality and enjoyable utility of a reasonable family home that is consistent with the desired future character of the neighbourhood and relevant planning controls.

Strict compliance is not necessary or reasonable to achieve the objectives as stated;

(a) the desired future character of the neighbourhood is unaffected; height, form, composition, setting, landscaping is all preserved and consistent with the streetscape.

(b) local amenity is unaffected
(c) solar access to existing buildings and open space is unaffected
(d) there is no resultant impact on adjoining or nearby properties or a disruption of views, loss of privacy, overshadowing or visual intrusion from this minor and integrated variation
(e) there is no impact to the amenity of the public domain in providing public views of the harbour and surrounding areas.

Item 12 **is the development standard a performance based control?**

No, the control is numerical, but the objectives can be assessed on their performance or effect; the objectives are all clearly satisfied and the additional amenity sought profound, and as noted again, without impact.

Item 13 **Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?**

As articulated in Item 10 above, the dwelling is deemed appropriate and consistent with the context. The variation sought has little bearing on the dwelling form with the additional FSR is exceedingly minor; landscaped area is actually increased with this proposal.

The benefits are critical and extensive as noted above.

The design carefully mitigates any impact or effect from this variation.

The variation sought is very small and not readily legible, being 3% of the total FSR and 0.015:1 FSR ratio.

There is no resultant impact from this minor variation; on balance and performance the proposed alterations and additions satisfy the clause.

Such a variation is common in this precinct

All of the objectives are satisfied and the breach has no bearing on the public or private amenity of adjacent areas; the amenity afforded by these modifications is appreciable and of critical importance for the owners of this property.

Item 14 **Are there sufficient environmental planning grounds to justify contravening the development standard? Give Details?**

Yes; please refer to items 10 & 13 above.

There are further grounds in addition to those described above:

- the LEP allows for variation to FSR in certain circumstances and this clause allows for such a variation provided the objectives are satisfied and the variation is reasonable as described in cl4.6(3)
- the stated objectives are satisfied
- The variation sought is minor and reasonable as described above
- the variation is typical in this precinct and occurs on many neighbouring dwellings
- there is no resultant impact from the minor variation sought
- There is no addition to site coverage or height or side or rear setbacks
- appropriate design responses have been employed for the specific constraints of site and dwelling
- there exists precedent for such variation
- the public domain is unaffected
- The variation is considered to be in the public interest

ITEM 3.2	**DA2021/1113 - 43 QUEENSCLIFF ROAD QUEENSCLIFF - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE**
REPORTING MANAGER	**RODNEY PIGGOTT**
TRIM FILE REF	**2021/835257**
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 DA2021/1113 for demolition works and construction of a dwelling house on land at Lot 1 DP 104227, 43 Queenscliff Road, Queenscliff, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1113

Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 1 DP 104227, 43 Queenscliff Road QUEENSCLIFF NSW 2096
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Stacey Margaret Rylands
Applicant:	Bogdan Nacu

Application Lodged:	15/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	05/10/2021 to 19/10/2021
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,511,779.00

Executive Summary

The application seeks consent for the construction of a new dwelling house at the subject site, including the demolition of all existing structures, including those that currently encroach upon the public road reserve.

The proposal involves variations to a number of WDCP 2011 controls, including front setbacks, rear setbacks and landscaped area. However, the development is a contextually appropriate design solution that provides a high level of amenity for future occupants of the dwelling.

Whilst submissions were received from eight (8) adjoining and nearby residents in objection to the proposed development, no matters were raised that warrant the refusal of the application or that cannot

be addressed via the imposition of conditions. Further, it is considered that there are many aspects of the proposal that will actually result in the enhancement of amenity for adjoining properties, compared to that which currently exists.

Given the level of public interest and as the cost of works exceeds $1 million, the proposal is referred to the Development Determination Panel (**DDP**) for determination, with a recommendation of approval subject to the draft conditions attached.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition of the existing dwelling and the construction of a new dwelling house. The dwelling house is to comprise:

- Level 1 - Garage Floor: double garage, one bathroom, gym, cellar and storage areas,
- Level 2 - Lower Ground Floor: two bedrooms, one bathroom, media room, plant room and laundry,
- Level 3 - Ground Floor: three bedrooms, two bathrooms, open plan kitchen/living/dining,
- Level 4 - First Floor: master bedroom (with ensuite and WIR), living room, front terrace and rear deck.

Each of the four levels are connected by an internal stair and a lift.

The proposal involves a considerable volume of excavation to provide for additional floor space at the two lower levels. The application also proposes a new access driveway, landscaping and stormwater infrastructure.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land

Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - 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

SITE DESCRIPTION

Property Description:	Lot 1 DP 104227 , 43 Queenscliff Road QUEENSCLIFF NSW 2096
Detailed Site Description:	The site is an irregular shape, with a 14.74m wide frontage to Queenscliff Road, a maximum depth of 22.505m and a total area of 309.8m². The site currently contains a multi-level dwelling house that partially encroaches within the public road reserve. The encroaching structures are the subject of a separate lease with Council. The site does not contain any significant landscaping, and previous rock outcrops have been heavily disturbed by the existing development of the site. The site experiences a fall of approximately 5m, from the rear boundary to the front boundary, with a slope of approximately 25%. There is a further fall to the road reserve of approximately 3.75m and a slope of approximately 45%. The site is surrounded by residential development of varying architectural style, age and character.

Map:



SITE HISTORY

On 15 July 2021, the subject application was lodged with Council. At the time of lodgement, the application sought to characterise the development as 'alterations and additions', with the retention of the existing garage structure forward of the front boundary. The application was notified in accordance with Council's Community Participation Plan.

On 26 August 2021, Council wrote to the applicant advising of concerns with regards to:

- Characterisation of the development as 'alterations and additions',
- Retention of encroachments within the road reserve,
- Front boundary setbacks,
- Building height calculations,
- Wall height non-compliance,
- Building envelope non-compliance,
- View loss,
- Landscaped open space non-compliance, and
- Solar access.

On 2 September 2021, the assessing officer met with the applicant to discuss the application.

On 27 September 2021, the application was amended, as follows:

- Re-characterisation of the development as a 'new dwelling',
- Additional demolition, specifically the structures within the road reserve,
- Increased setback between the development and the front boundary at all four levels,
- Increased side setbacks at the upper level,
- Reduced roof height, and
- Additional landscaping.

The amended application was re-notified to all originally notified parties and to those who lodged submissions in response to the original notification.

On 19 October 2021, the assessing officer undertook inspections of the dwellings at 30, 32 and 34 Pavilion Street, in addition to the subject site.

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

Section 4.15 Matters for Consideration	Comments
	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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 05/10/2021 to 19/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Mrs Guiseppina Pellicano	32 Pavilion Street QUEENSCLIFF NSW 2096
Ms Jan Mercia Beach	34 Pavilion Street QUEENSCLIFF NSW 2096
Christopher Donald Wood	1 / 66 Queenscliff Road QUEENSCLIFF NSW 2096
Mrs Michaele Rose Somerville	54 Queenscliff Road QUEENSCLIFF NSW 2096
Withheld	COLLAROY NSW 2097
Dr Margaret Elizabeth Ethel Goldie	16 Pavilion Street QUEENSCLIFF NSW 2096
Jay Richardson	6 Pavilion Street QUEENSCLIFF NSW 2096
Withheld Pina Pellicano	QUEENSCLIFF NSW 2096
Withheld Pina Pellicano	30 Pavilion Street QUEENSCLIFF NSW 2096

Eight (8) submissions were received in response to the notification of the development presented at lodgement.

In response to the notification of the amended plans, one (1) additional submission was received, raising concerns in relation to the amended development.

The concerns raised in the submissions received are addressed as follows:

- **View loss**
  Submissions have been received in objection to the proposed development, raising concerns with regard to the potential obstruction of existing views. The proposed development has been amended to ensure that the bulk of the development is maintained within the volume of the existing dwelling, with only minor new elements protruding beyond the roof line of the existing building. As discussed with regard to clause D7 of WDCP 2011, the impact of these new protrusions is negligible, with potential enhancement of beach views currently obstructed by the existing pitched roof.

- **Visual privacy**

Submissions have been received in objection to the balcony in the north-eastern (rear) corner of Level 4, and associated impacts upon privacy of the adjoining dwelling to the east. As discussed with regard to clause D8 of WDCP 2011, a privacy screen is recommended to maximise privacy to the adjoining dwelling to the east. A further submission was received with regard to the impact of this deck upon privacy of the dwelling to the north. In light of the difference in levels between the two properties, and in circumstances where the DCP encourages the use of the rear setback for private open space, the incorporation of any screening to the north is not considered to be warranted.

- **Extent of excavation**
  Concerns have been raised with regard to the extent of excavation proposed and any associated impacts upon the amenity and structural integrity of adjoining dwellings during construction. The application was supported by a Geotechnical Report that includes recommendations to ensure that risk to adjoining properties is appropriately minimised. Conditions of consent are recommended to require consistency with these recommendations, with further conditions recommended to require the production of pre and post construction dilapidation reports for all adjoining properties.

- **Demolition of the existing dwelling (Heritage)**
  Submissions have been received in objection to the proposed demolition of the existing dwelling, with suggestions that the dwelling has local heritage significance. The application was referred to Council's Heritage Officer in light of these submissions, who was not satisfied that the dwelling met the requirements for inclusion in Council's Local Heritage Inventory. Council's Heritage Officer has recommended a condition of consent to require an archival record of the dwelling, prior to demolition.

- **Cost of works**
  Submissions received raise concern with regard to the nominated cost of works, with suggestions that the nominated costings are too low. The application was support by a signed Cost Summary Report completed by a registered Quantity Surveyor, consistent with Council's lodgement requirements.

- **Characterisation of development**
  At the time of lodgement, the application sought to retain existing subfloor structures and the application was described as alterations and additions. In response to the original notification, submissions were received in objection to this description, with suggestions that the works were more appropriately characterised as the construction of a new dwelling. During the assessment process, the application was amended such that the structures initially proposed for retention are now to be demolished and the description of the development has been amended to a new dwelling.

- **Building bulk**
  Submissions have been received in objection to the bulk and scale of the proposed development. Whilst the proposal comprises four levels, the height of the development does not exceed two storeys above natural ground, and the upper level is maintained will below the height plane.

- **Impacts upon trees (Tree 7 and Tree 8)**

An objection has been received from the adjoining property owner of 30 Pavilion Street, raising concerns with regard to the impact to trees along the common boundary, specifically Trees 7 and 8. The development within the vicinity of these trees has been considered by an Arborist, who has provided recommendations to ensure the safe retention of the trees in question. The Arborist Report has been reviewed by Council's Landscape officer, who is satisfied in this regard, subject to the imposition of condition of consent to ensure consistency with the recommendations of the Arborist Report.

- **Conditions to be imposed**
  A submission received from an adjoining property owner includes a list of specific conditions to be imposed, should the application be approved by Council. A number of the conditions recommended relate to Council's Geotechnical Risk Management Policy for Development in Pittwater, that is not relevant to the subject site. Nonetheless, the relevant conditions have been imposed to ensure the outcome intended by the submissions.

- **Non-compliance with controls**
  A submission received from an adjoining property owner lists areas of non-compliance with Council's DCP, but does not associate these areas of non-compliance with any specific impact or concern. It is acknowledged that the proposed development is non-compliant with provisions of WDCP 2011, specifically with regard to front setbacks, rear setbacks and building envelope. However, these aspects of the development have been considered on merit, and have been found to be acceptable as the intent of the control, or the objectives of the control, are otherwise achieved. This is consistent with the requirements of clause 4.15(3A) of the EP&A Act, which prescribes that the consent authority is to be flexible in applying the provisions of a DCP and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

- **Precedence**
  Submissions have been received in objection to the proposed development and any precedence that approving the development may establish. The development has been considered with respect to the individual circumstances of the site and is not considered to result in an outcome that establishes an undesirable precedence.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**No objection, with conditions.** <u>*Amended Plans Comment 6/10/2021*</u> *Amended plans, including amended landscape plans, are noted.* *The requirement for removal of existing garage structures and rebuilding of retaining walls in the road reserve will result in removal of three trees within the road reserve.* *The landscape plans indicate replanting of trees, shrubs and groundcovers in the road reserve to replace existing vegetation. No objections are raised to the proposed landscape works in the road reserve, however I would defer to comments of Roads Assets section regarding works in the road reserve.*

Internal Referral Body	Comments
	Proposed landscape works within the site, including retention of trees, are not objected to in general, however several species proposed are considered invasive or potentially invasive and are conditioned to be replaced. *No objections are raised to approval with regard to landscape issues subject to conditions.* *Original Comment* *The application seeks consent for alterations and additions to an existing dwelling including basement excavation and minor landscape works.* *Council's 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 Arborist's Report prepared by Urban Arbor is noted.* *The Report indicates that 4 trees are required to be removed to accommodate the proposed works. Of these, two are exempt under MDCP and the other two are small trees on the side boundary. All other trees on site are to be retained, as is a rock outcrop in the rear yard.* *No objections are raised to approval with regard to landscape issues subject to conditions as recommended.*
NECC (Coast and Catchments)	**No objection, no 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.* *As assessed in the submitted Statement of Environmental Effects (SEE) report, the DA 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 State Environmental Planning Policy (Coastal Management) 2018.*
NECC (Development	**No objection, with conditions.**

Internal Referral Body	Comments
Engineering)	*Development Engineering has no objection to the application subject to the following conditions of consent.*
NECC (Riparian Lands and Creeks)	**No objection, with conditions.** *This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The site is in close proximity to both Manly Lagoon and Freshwater Beach. The development must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to the beach or lagoon.* *Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished. This application, subject to conditions, is recommended for approval as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Manly Lagoon and Freshwater Beach if conditions are adhered to.*
Property Management and Commercial	**No objection, no conditions.** *Property notes the amended location of the garage within the property boundaries and has no further comment to make.*
Road Reserve	**No objection, no conditions.** *The relocation of the garage within the property boundary is noted.* *The proposed retaining walls on the public road reserve to support the excavation of the driveway access and associated landscaping will require a Road Act application for Infrastructure Works on Council Roadway under S138. Retaining walls parallel to the kerb shall be 1.5m clear of the rear of kerb. Conditions to be applied by the Development Engineering Team.*
Strategic and Place Planning (Heritage Officer)	**No objection, with conditions.** *The proposal has been referred to Heritage as the subject property is within the vicinity of a heritage item, listed in Schedule 5 Environmental Heritage of Warringah LEP 2011: **Item I127 - House** - 56 Queenscliff Road* *Details of the item as contained within the Northern Beaches inventory is as follows:* *Statement of significance: A locally rare & representative example of an inter-war building in the mediterranean style. Displays high integrity with much original fabric & detailing. Prominent location providing evidence of inter-war development which maximised views of the sea. Physical description: Two storey rendered masonry dwelling with hipped tiled roof.Square headed windows and pairs of arched windows with central column.Balcony on side over door. Extensive terrace over*

Internal Referral Body	Comments
	tall loggia on southern side. Rendered chimney with arched top.Stone fence. Single garage in front, towards the street, with gabled tiled roof & new door. Fibro to gable. *Consideration of Application* *The proposal seeks consent for substantial alterations and additions to the existing dwelling, which is a well maintained building, from the Federation era named "Mandalay". The proposed demolition works are extensive and completely remove the historical identity of the existing dwelling. The proposal does not relate to the existing dwelling other than the existing building's footprints.* *From a heritage point of view, the retention and adaptation of the existing building rather than the demolition and replacement with new structures, would had been preferred. It is believed, that a wide range of design solutions may emerge for any design work after careful analysis.* *The listed heritage item is located approximately 60m south-east of the subject site. Given the physical separation between the proposed works and the heritage item, the proposal is considered to not have an adverse impact upon the significance of the heritage item.* *Therefore, no objection are raised on heritage grounds, subject to one condition.* *Amended plans have been provided in September 2021 due to concerns raised elsewhere. Heritage raises no objections to the amended plans subject to continuation of the photographic archival recording condition.*

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	**No objection, with conditions.** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	**No objection, no conditions.** Correspondence was received from the AHO confirming that there are no Aboriginal heritage issues for the proposed development.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment,

many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A420694 dated 16 June 2021). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Coastal Management) 2018

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

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matter listed in clause 14(1) of the CM SEPP,
- the proposal has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development, and
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.8m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.2 Earthworks

The consent authority can be satisfied that appropriate consideration has been given to the matters listed by clause 6.2 of WLEP 2011, as follows:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality

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

(b) the effect of the proposed development on the likely future use or redevelopment of the land

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

(c) the quality of the fill or the soil to be excavated, or both

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

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

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

(e) the source of any fill material and the destination of any excavated material

Comment: Should the application be approved, a condition can be included in the recommendation of this report requiring any fill to be of an suitable quality.

(f) the likelihood of disturbing relics

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

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

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

6.4 Development on sloping land

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

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council can be satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The application has been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections, subject to the imposition of relevant conditions. Therefore, Council can be satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report confirmed that normal ground water seepage is expected to move over the buried surface of the rock and through any cracks. However, this is not unusual, and recommendations have been provided in this regard. Council's Development Engineers raise no objections to approval, subject to conditions. Therefore, Council can be satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Council can be satisfied of the matters listed in clause 6.4 of WLEP 2011.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.6m	0.4m or 5.5%	No
B3 Side Boundary Envelope	West (5.0m)			

	L3: 5.94m - 7.9m L4: 7.15m	L3: 3.3m - 4.1m L4: 6.2m - 6.8m	- -	Yes Yes
	East (5.0m) L3: 6.5m - 6.8m L4: 6.5m - 7.8m	L3: 3.8m - 4.7m L4: 5.8m - 7.6m	- 1.1m or 16.9%	Yes No
B5 Side Boundary Setbacks	West: 0.9m	0.94m	-	Yes
	East: 0.9m	1.51m	-	Yes
B7 Front Boundary Setbacks	6.5m	L1: Nil L2: 2.8m - 4.1m L3: 2.4m - 4.9m L4: 4.0m - 8.15m	6.5m or 100% 3.7m or 56.9% 4.1m or 63.1% 2.5m or 38.5%	No No No No
B9 Rear Boundary Setbacks	6m	L1: 3.6m - 6.4m L2: 3.6m - 6.4m L3: 3.8m - 6.0m L4: 3.2m - 5.8m	2.4m or 40.0% 2.4m or 40.0% 2.2m or 36.7% 2.8m or 46.7%	No No No No
D1 Landscaped Open Space (LOS) and Bushland Setting	123.92m² or 40%	61.3m² or 19.8%	62.62m² or 50.5%	No

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

Compliance Assessment

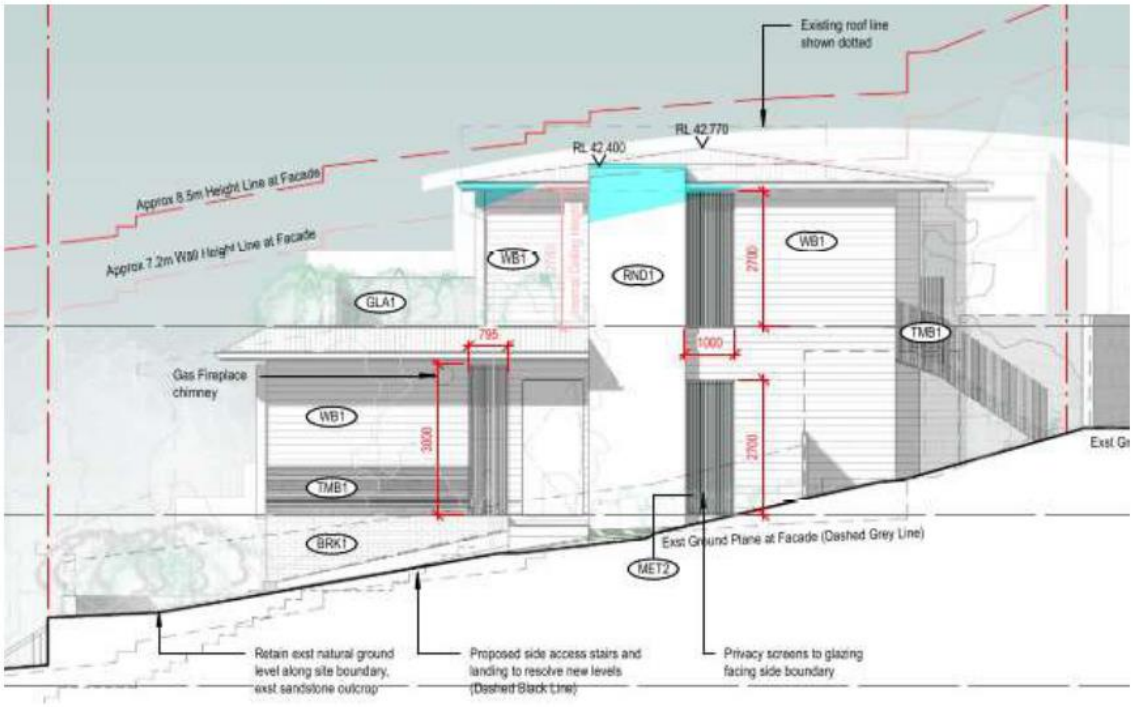
Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

The proposed development protrudes beyond the prescribed side boundary envelope on the eastern side of the upper floor, the extent of which is highlighted in blue in the diagram below. The protrusions are relatively minor, do not attribute to any unreasonable impacts upon adjoining dwellings or excessive bulk and scale.



The minor variation is considered reasonable, as the non-compliance does not detract from consistency with the objectives of the side boundary envelope control, as follows:

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

  Comment: The areas of non-compliance are limited to the eastern side of the upper floor, which is setback from the street frontage and the levels below. The building as a whole is well articulated, and is of a scale that is commensurate with surrounding dwellings, such that the proposal will not be visually dominant in the streetscape.

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

  Comment: The minor portions of the development that protrude above the prescribed side boundary envelope to not attribute to any unreasonable impacts upon the amenity of adjoining dwellings with regard to visual privacy or solar access.The proposal provides varied setbacks to the eastern side boundary, with adequate spatial separation to the adjoining dwelling.

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

  Comment: The massing of the development has been designed to follow the slope of the land, with no more than two storeys above natural ground in any one place. Whilst the proposal is reliant upon considerable volume of excavation, the excavation does not extend unnecessarily beyond the footprint of the upper levels, and the resultant development will be seen to appropriately respond to the topography of the land.

B7 Front Boundary Setbacks

The proposed development is sited with varied setbacks to Queenscliff Road, with a nil setback at Level 1 (Garage Level) and a maximum setback of 8.15m at Level 4 (First Floor). The proposal is sited forward of the 6m front building line, with non-compliance of varying degree at each of the four levels proposed. Despite the extent of non-compliance, the proposal is supportable on merit in circumstances where the setbacks are greater than those of the current dwelling on the site and are generally consistent with the setbacks of other development along the street. Furthermore, the proposal is considered to be consistent with the objectives of the front boundary setback control, as follows:

- *To create a sense of openness.*

  Comment: The greatest degree of non-compliance occurs at Level 1 (Garage Level), where the garage is sited with nil setbacks to the street. However, the limited setback is not considered to impinge upon the sense of openness along the street, as the garage level is excavated into the hillside, marrying with the heights of the surrounding land. Whilst the upper levels are also non-compliant with the 6.5m setback, the siting and massing of the development is consistent with that of nearby development, with the setbacks increasing as the height of the development increases above natural ground levels.

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

  Comment: There is no de-facto or established building line along Queenscliff Road, with a number of dwellings sited in close proximity to the street.The subdivision pattern is the main contributing factor to the siting of housing along Queenscliff Road, with minimal setbacks to dwellings on smaller shallower lots (including the subject site) and larger setbacks to Queenscliff Road on the larger, narrower lots that have a primary frontage to Pavilion Street. The setbacks of the proposed development are greater than that of the existing dwelling, and appropriately respond to the siting of surrounding development.

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

  Comment: The proposed development will result in a positive contribution to the streetscape, with a mass and form that is consistent with surrounding development and a high quality landscape treatment to complement the architectural design solution proposed.

- *To achieve reasonable view sharing.*

  Comment: The front setbacks of the development are increased compared to those of the existing dwelling, which may facilitate greater views for the property to the west. At the upper level, the roof and enclosing walls are setback at a distance of 6.6m - 8.14m, compliant with the 6.5m minimum setback prescribed. At Level 4 (First Floor), the non-compliance with the front setback is limited to the balcony, which does not attribute to any unreasonable impacts upon views currently enjoyed from the properties up slope.

B9 Rear Boundary Setbacks

The proposed dwelling is sited with a minimum setback of 3.2m from the rear boundary, inconsistent with the 6m minimum prescribed by this control. Nonetheless, the proposal is supportable on merit as it is consistent with the objectives of the rear boundary setback control, as follows:

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

Comment: The rear setback of the proposed development are generally consistent with that of the existing dwelling, such that the existing deep soil zone at the rear of the property is maintained.

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

  Comment: Any sense of openness in the rear yard is significantly compromised by the retaining wall and limited setback of the dwelling to the rear. This existing context, the reduced depth of the block and the availability of views to the south, is why the dwelling has been designed to somewhat turn away from the rear and address the street.

  Whilst strict compliance with the 6m rear setback control would provide a larger, more open space, the benefit of achieving a larger space is questioned, noting the degree to which the area is overshadowed and overlooked by adjoining properties. The siting of the development is considered to be an appropriate contextual response to the circumstances of the site.

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

  Comment: The reduced rear setback does not give rise to any unreasonable impacts upon adjoining properties. Rather, the reduced rear setback is considered to preserve the amenity of adjoining sites, by virtue of maintaining the larger areas of private open space to the frontage of the property.

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

  Comment: The siting of the proposed development in relation to the rear boundary is generally consistent with that of the existing dwelling, with the maintenance of the existing retaining wall and deep soil terracing at the rear of the site. The alignment of the proposed dwelling and the proximity of the proposal to the rear boundary is not at odds with surrounding and nearby development, particularly noting the reduced rear setbacks of development to the west.

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

  Comment: The development maximises privacy for adjoining properties and future occupants of the proposed dwelling by turning away from the rear boundary and orienting the dwelling towards the street. Whilst a small balcony is proposed in the south-east corner of the site, the area in question is more of a secondary space, that will not result in unreasonable impacts upon the adjoining dwellings.

D1 Landscaped Open Space and Bushland Setting

With a landscaped area of only 19.8%, the proposed development falls well short of the 40% minimum prescribed by this control. However, the proposal will result in an increase in landscaped area and an enhanced landscape treatment compared to that which currently exists.

The proposed development is considered with respect to the objectives of the landscaped area control, as follows:

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

Comment: The application seeks consent for landscaping works within the road reserve and at the frontage of the site to enhance the landscaped treatment of the site.

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

  Comment: The proposed development is generally maintained within the footprint of the existing dwelling, such that despite the additional excavation proposed, the existing topographical features are maintained. The proposed development results in an enhancement of landscaping across the site, providing additional habitat for any local wildlife.

- *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 application was supported by a detailed landscape plan which proposes to enhance the landscaped treatment of the site, with appropriate species, quantities and sizes to enable establishment and on-going maintenance. The proposed landscape treatment is an appropriate contextual response to the architectural design proposed.

- *To enhance privacy between buildings.*

  Comment: The application proposes plantings at upper levels of the dwelling to ensure privacy between dwellings and to soften the visual impact of the proposed development.

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

  Comment: The proposed development provides a balance of deep soil recreational areas and balconies and terraces, to meet the outdoor recreational needs of future residents of the dwelling.

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

  Comment: the proposed dwelling provides sufficient opportunity for the drying of clothes and other such domestic functions.

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

  Comment: Council's Development Engineers have reviewed the submitted Stormwater Management Plan and raise no objection in this regard, subject to conditions of consent.

The proposed development is consistent with the objectives of the landscaped area control, and despite the not insignificant numerical non-compliance, the proposed variation is supported.

D2 Private Open Space

Clause D5 of WDCP 2011 requires a dwelling of the size proposed to provide a total of 60m² (minimum) of private open space, with minimum dimensions of no less than 5m. Whilst the proposed development achieves a minimum area of 60m², no area of private open space achieves the 5m minimum dimension requirement of this clause.

Nonetheless, the proposal provides adequate areas of private open space, consistent with the objectives of the control, as follows:

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

  Comment: Despite not achieving minimum dimensions of 5m, each area of private open space has been designed with dimensions that are appropriate with regard to the intended use of the space.

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

  Comment: The primary area of private open space is located at Level 4, adjacent to the rumpus room and master bedroom. The rear yard also provides for private recreation and is accessible from both Levels 3 and 4.

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

  Comment: The proposed areas of private open space are located to minimise impacts upon the amenity of adjoining properties.

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

  Comment: The larger rear area of private open space is overshadowed for the majority of the day in mid winter. As such, the proposal includes a smaller elevated area of private open space to maximise morning sunlight throughout the year. The front upper level terrace will also receive adequate sunlight.

D6 Access to Sunlight

Adjoining properties
The proposed development does not result in any unreasonable overshadowing of adjoining properties and is consistent with the objective of this control that aim to ensure that reasonable access to sunlight is maintained.

The proposal does not unreasonably overshadow the public domain, and is consistent with the objective of this control that aims to ensure the amenity of the public domain.

Proposed dwelling
The proposed development does not receive 3 hours of direct sunlight to 50% of the required area of private open space in mid-winter. This is not considered to be a consequence of the proposed design,

but rather due to the slope of the land and the size/proximity of dwellings to the north, which result in the site being overshadowed for the majority of the day in midwinter.

The proposed development has been designed with appropriate ceiling heights and ample glazing, to maximise daylight within the dwelling. As such, the proposal is consistent with the objectives of this control that promote passive solar design.

D7 Views

Views of Queenscliff/Manly Beach are currently enjoyed over the subject site by neighbouring and nearby properties. In response to the notification, submissions were received raising concerns with regard to the potential impact of the development upon such views from:

- The owners of 32 Pavilion Street,
- The owners of 34 Pavilion Street, and
- The owners of a nearby property that wish to remain anonymous.

Height poles were erected to demonstrate the indicative height of the proposal. An assessment of the level of impact based upon these height poles and with regard to the four step View Sharing Planning Principle, established by the Land and Environment Court in the matter of *Tenacity Consulting v Warringah Council [2004] NSWLEC 140,* has been undertaken, as follows:

32 Pavilion Street

1. The dwelling at 32 Pavilion Street is located up slope and immediately to the north of the subject site. Occupants of the dwelling a 32 Pavilion Street currently enjoy views of Queenscliff/Manly Beach and North Head from all south facing windows on the upper level of the dwelling, and the rear upper floor balcony.

2. The views in question are gained in a southerly direction, across the rear boundary of the property at 32 Pavilion Street and over the top of down slope properties, including the subject site. The views in question are gained in both a seating and standing position.

3. The proposed development is generally maintained within the volume of the existing dwelling at the subject site, with only minor protruding elements along the side elevations of the upper floor. As shown in Figure 1, the impact of the proposed development upon views from with the living room is negligible, obstructing only a minor portion of foreground buildings. The same can be said with regard to the view from the rear balcony, as shown in Figure 2. If anything, it is likely that the views of Queenscliff Beach will be enhanced by the proposed development, noting that the proposed roof form is 0.43m – 1.1m lower than the roof of the existing dwelling.



Image 1 - View from living room of 32 Pavilion Street.



Image 2 - View from rear deck of 32 Pavilion Street.

4. Noting the negligible impact of the development upon available views, consideration of a more skilful design is not warranted and the overall impact is reasonable

34 Pavilion Street

1. The dwelling at 34 Pavilion Street is located up slope and to the north-west of the subject site. Occupants of the dwelling a 34 Pavilion Street currently enjoy views of Queenscliff/Manly Beach and North Head from the south facing rear balcony and adjoining living room.

2. The views in question are gained in a south-easterly direction, across the rear and side boundaries of the property at 34 Pavilion Street and over the top of down slope properties, including the subject site. The views in question are gained in both a seating and standing position.

3. The proposed development is generally maintained within the volume of the existing dwelling at the subject site, with only minor protruding elements along the side elevations of the upper floor. As shown in Figure 3, the impact of the proposed development upon views from with the rear deck is negligible, obstructing only a minor portion of foreground buildings. Similar to that anticipated in relation to 32 Pavilion Street, it is likely that the views of Queenscliff Beach will be enhanced by the proposed development, noting that the proposed roof form is 0.43m – 1.1m lower than the roof of the existing dwelling.



Image 3 - View from rear deck at 34 Pavilion Street.

4. Noting the negligible impact of the development upon available views, consideration of a more skilful design is not warranted and the overall impact is considered to be reasonable.

Nearby Property

A submission was received from a nearby property in response to the original notification raising concerns in relation to potential impacts upon views. The submission included a photograph that demonstrated the current view and requested the submission to remain confidential. Despite request, access to the property to undertake necessary site inspections was not granted. Furthermore, no further submission was received following the notification of the amended plans or the erection of height poles on site.

Based on the photograph provided, the proposed development is unlikely to result in any impacts upon the existing view corridor, as the proposal is largely maintained within the volume of the existing dwelling and below the height of the neighbouring dwelling, with the water and beach views to be maintained wholly above.

Overall, the consent authority can be satisfied that the proposed development will not result in any adverse impacts upon views and view sharing between properties is achieved.

D8 Privacy

The proposed development has been designed to maximise privacy for both future occupants of the

dwelling and adjoining properties, with windows primarily oriented to the front or rear of the dwelling, and screens or obscure glazing to any side windows.

Whilst separated by the proposed stairwell, the rear external deck is to be located in close proximity to the rear private open space of the adjoining dwelling at 30 Pavilion Street. To ensure privacy between properties, it is recommended that the timber screen/balustrade along the eastern elevation of the stairs is increased to 1.7m in height.

D9 Building Bulk

The stone facade of the Level 1 garage is proposed to extend up to enclose the front terrace of Level 2 above, with a resultant wall height of 1.7m above the terrace and 4.6m above the level of the driveway. Whilst intentionally designed to reduce the visual impact of the dwelling house as seen from the street, the exaggerated form unnecessary increases the apparent size of the garage structure that is to be sited with a nil setback to the street. It is recommended that the wall be reduced to no more than 1m above the FFL of the Level 2 front terrace, which will both reduce the dominance of the garage and allow for the landscaping atop of the garage to be more visible from the public domain.

The application proposes excavation of a considerable depth to provide for non-habitable spaces at the lower levels of the development, inconsistent with the requirements of this control that prescribe the need to minimise excavation. However, the extent of excavation is supportable in this instance, as the proposal is consistent with the objectives of the control

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

  Comment: The proposed excavation is limited to the footprint of the proposed development, allowing for the retention of existing natural ground levels around the perimeter of the building. The additional subterranean floor space ensures that the upper levels can be appropriately articulated to ensure that the bulk and scale of the dwelling presenting to the public domain is commensurate with surrounding development.

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

  Comment: The proposed excavation will not be perceived from the public domain, with the resultant development appearing to follow the slope of the land.

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 $15,118 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,511,779.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/1113 for Demolition works and construction of a dwelling house on land at Lot 1 DP 104227, 43 Queenscliff Road, QUEENSCLIFF, 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**
D100 Garage Floor Plan - Existing, Demolition & Excavation, Revision 3	24 September 2021	buck & simple
D101 Garage Floor Plan - Proposed, Revision 3	24 September 2021	buck & simple
D102 Lower Ground Floor Plan - Existing, Demolition & Excavation, Revision 3	24 September 2021	buck & simple
D103 Lower Ground Floor Plan - Proposed, Revision 3	24 September 2021	buck & simple
D104 Ground Floor Plan - Existing & Demolition, Revision 3	24 September 2021	buck & simple
D105 Ground Floor Plan - Proposed, Revision 3	24 September 2021	buck & simple
D106 First Floor Plan - Existing & Demolition, Revision 3	24 September 2021	buck & simple
D107 First Floor Plan - Proposed, Revision 3	24 September 2021	buck & simple
D301 Section 1 - Existing & Demolition, Revision 3	24 September 2021	buck & simple
D302 Section 2 - Proposed, Revision 3	24 September 2021	buck & simple
D304 Section 3, Revision 3	24 September 2021	buck & simple
D305 Section 4, Revision 3	24 September 2021	buck & simple
D400 South Elevation - Existing & Demolition, Revision 3	24 September 2021	buck & simple
D401 South Elevation - Proposed, Revision 3	24 September 2021	buck & simple
D402 East Elevation - Existing & Proposed, Revision 3	24 September 2021	buck & simple
D403 East Elevation - Proposed, Revision 3	24 September 2021	buck & simple
D404 North Elevations - Existing, Demolition & Proposed, Revision 3	24 September 2021	buck & simple
D405 West Elevation - Existing & Proposed, Revision 3	24 September 2021	buck & simple
D406 West Elevation - Proposed, Revision 3	24 September 2021	buck & simple
D904 Street Perspective View and Materials, Revision 3	24 September 2021	buck & simple

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate A420694	16 June 2021	buck & simple
Geotechnical Investigation	28 June 2021	White Geotechnical Group

Arboricultural Impact Assessment Report	28 May 2021	Urban Arbor

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**
PH_43QR_01 Landscape Cover, Issue A	21 September 2021	Stepped Landscape Studio
PH_43QR_02 Landscape Ground, Issue A	21 September 2021	Stepped Landscape Studio
PH_43QR_03 Landscape Roof, Issue A	21 September 2021	Stepped Landscape Studio

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	21 June 2021	buck & simple

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. **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 dwelling house.

A **dwelling house** means a building containing only one dwelling, as defined by Warringah Local Environmental Plan 2011.
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.

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 $15,117.79 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 $1,511,779.00.

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. **Amended Landscape Plan**
An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

i) 2 x *Cupanniopsis anacardioides* indicated in the road reserve are to be replaced with 2

x *Banksia integrifolia.*

ii) *Raphiolepsis* 'Snow Maiden' is to be replaced with a native species of similar size and growth habit.

iii) *Cotoneaster dammeri* is the be replaced with a native species of similar size and growth habit.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

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. **Photographic Archival Record**
A photographic archival record of the site is to made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the NSW Heritage Division of the NSW Office of Environment & Heritage (OEH).

This record must be submitted to and approved by Council's Heritage Officer prior to commencement of any demolition or works on-site.

Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority.

The photographic record should be made using digital technology, submitted on archival quality CD-R disc, and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

10. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- The balustrade along the eastern side of the external rear staircase, connecting the First Floor Deck and the rear yard, is to be increased in height to 1.7m above the FFL of the

First Floor Deck.
- The wall atop of the garage, parallel to the front boundary, is to be reduced in height from 1.7m to 1.0m above the FFL of the Lower Ground Level front terrace.

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.

11. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report 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.

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

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

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

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

13. **Structural Adequacy and Excavation Work**
Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

14. **Shoring of Council's Road Reserve (Temporary road anchors)**
Should the proposal require shoring to support an adjoining property or Council land, the

Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

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

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

15. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Tree Removal Within the Property**
This consent approves the removal of the following trees within the property as identified in the Arboricultural Impact Assessment Report dated 28 May 2021 prepared by Urban Arbor:
i) T2 *Olea europea*; T9 *Callistemon* sp.; T10 *Plumeria rubra*; T12 (Dead tree)

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

Reason: To enable authorised building works.

17. **Tree Removal Within the Road Reserve**
a) This consent approves the removal of the following tree(s) within the road reserve as listed in the Arboricultural Impact Assessment prepared by Urban Arbor dated 28 May 2021 :
i) T1 *Callistemon viminalis*, T3 *Pittosporum undulatum* and T4 *Melaleuca quinquenervia*

b) Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services Section prior to removal.

Reason: Public liability.

18. **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:

- 30 Pavilion Street, Queenscliff
- 32 Pavilion Street, Queenscliff
- 34 Pavilion Street, Queenscliff,

- 45 Queenscliff Road, Queenscliff

The dilapidation reports are 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.

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **Protection of Rock and Sites of Significance**
All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

22. **Tree and Vegetation Protection**

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

i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,

ii) all trees and vegetation located on adjoining properties,

iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,

ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,

iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,

iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,

vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

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

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

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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

23. **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.

24. **Installation and Maintenance of Sediment and Erosion Controls**
Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by <INSERT> 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.

25. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- 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.

26. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

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

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

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

27. **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

28. **Landscape Completion**
a) Landscaping, including that indicated within the road reserve, is to be implemented in accordance with the approved Landscape Plan.

b) Prior to the issue of any Occupation Certificate details (from a qualified horticulturalist, landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

29. **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.

30. **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:

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

31. **Geotechnical Certification Prior to Occupation Certificate**
A suitably qualified Geotechnical Engineer is to provide certification that the as-built development was constructed in accordance with the recommendations of the Geotechnical Report referenced in Condition 1 of this consent.

The certification is to be provided to the Principal Certifying Authority prior to the issuance of the occupation certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

33. **Landscape Maintenance**
a) Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

c) For all new residential works with two or more dwellings and mixed use developments, 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.

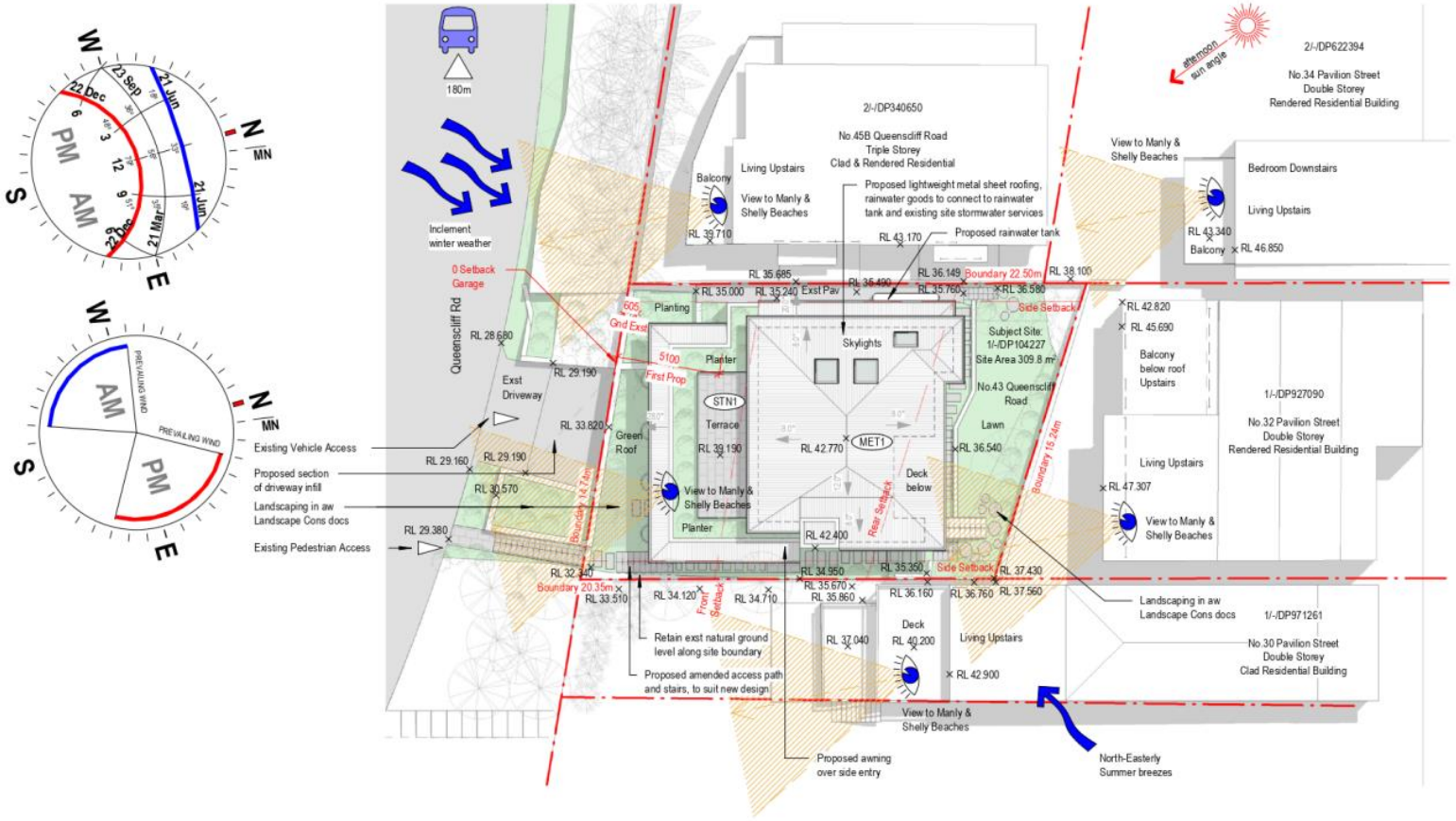
d) All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

34. **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 me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.



buck&simple.
doers of stuff

General Notes
The copyright of this design remains the property of buck&simple. This design is not to be used, copied or reproduced without the authority of buck&simple. Do not scale from drawings. Confirm dimensions on site prior to the commencement of works. Where a discrepancy arises, seek direction prior to proceeding with the works. This drawing is only to be used by the stated Client in the stated location for the purpose it was created. Do not use this drawing for construction unless designated.

Contact: info@buckandsimple.com
ABN : 86 106 604 025
NSW #8631 VIC #19664
www.buckandsimple.com

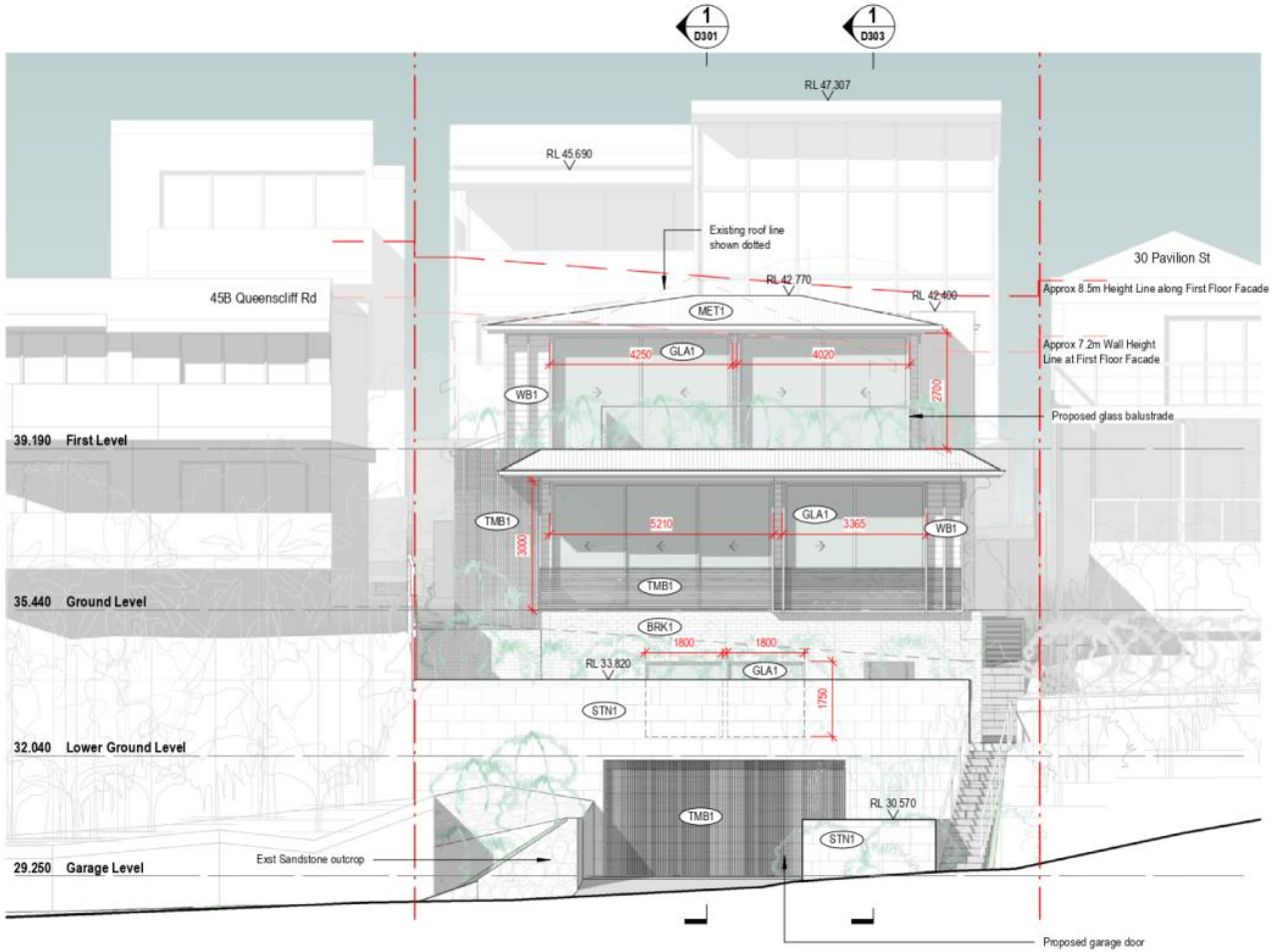
Development Application

No.	Description	Date
1	Preliminary	25 Jun 21
2	Issue for Development Application	02 Jul 21
3	Issue for Development Application Updates	24 Sep 21

Project	Queenscliff Residence
Location	43 Queenscliff Road, Queenscliff, 2096
Client	Chris & Stacey
Drawing	Site Layout & Site Analysis - Proposed

Scale @ A3	Drawn by	Checked by
1 : 200	BS	BS
Project Issue Date	Sheet Issue Date	
September 2020	24 Sep 21	
Project number	Drawing #	Revision
1185	D011	3

24/09/2021 6:24:32 PM



buck&simple.
doers of stuff

General Notes
The copyright of this design remains the property of buck&simple. This design is not to be used, copied or reproduced without the authority of buck&simple. Do not scale from drawings. Confirm dimensions on site prior to the commencement of works. Where a discrepancy arises, seek direction prior to proceeding with the works. This drawing is only to be used by the stated Client in the stated location for the purpose it was created. Do not use this drawing for construction unless designated.

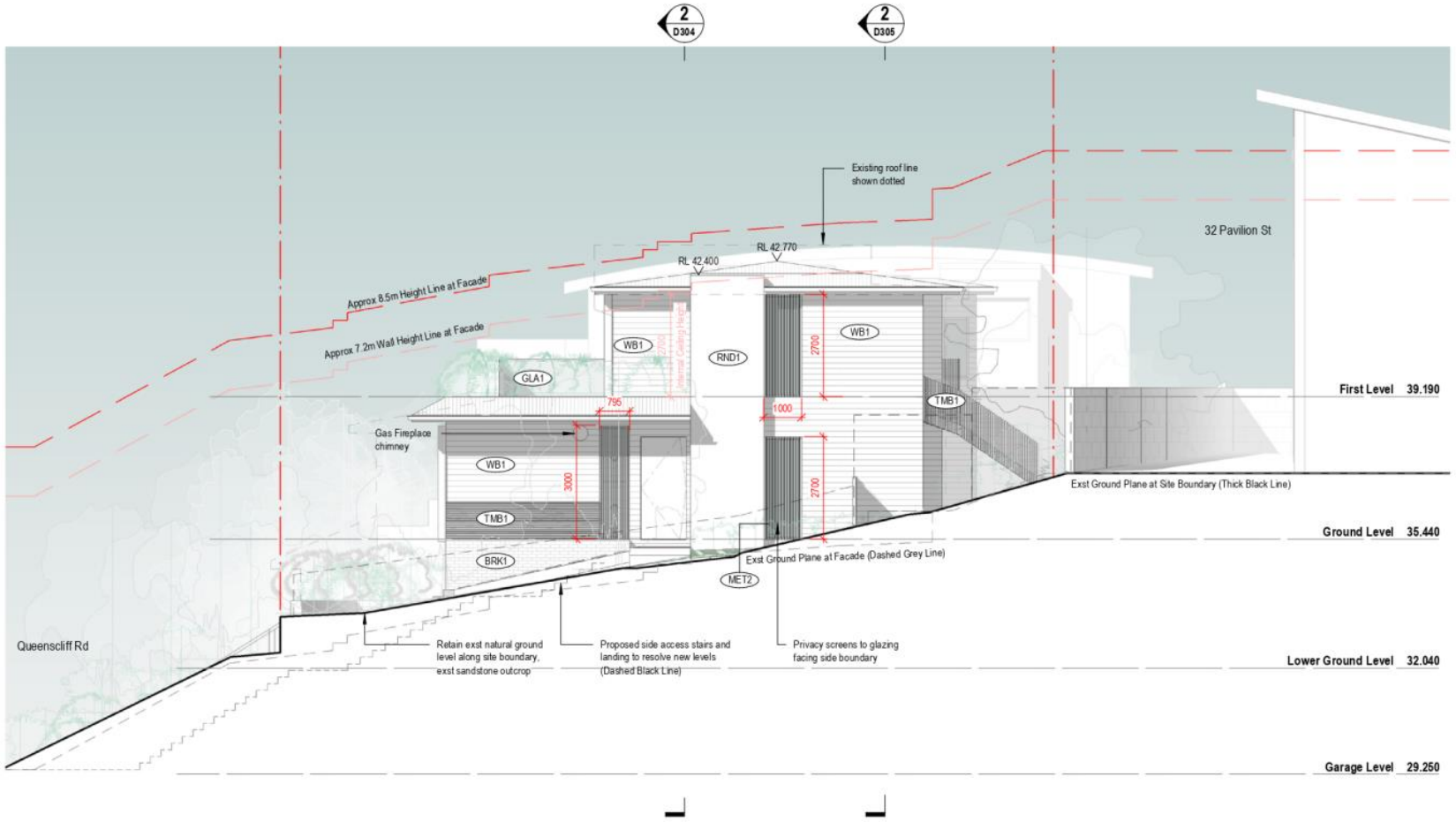
Contact: info@buckandsimple.com
ABN : 86 106 604 025
NSW #8631 VIC #19664
www.buckandsimple.com

Development Application

No.	Description	Date
1	Preliminary	25 Jun 21
2	Issue for Development Application	02 Jul 21
3	Issue for Development Application Updates	24 Sep 21

Project: Queenscliff Residence
Location: 43 Queenscliff Road, Queenscliff, 2096
Client: Chris & Stacey
Drawing: South Elevation - Proposed

Scale @ A3: 1 : 100
Drawn by: BS
Checked by: BS
Project Issue Date: September 2020
Sheet Issue Date: 24 Sep 21
Project number: 1185
Drawing #: D401
Revision: 3
24/09/2021 6:25:47 PM



buck&simple.
doers of stuff

General Notes

The copyright of this design remains the property of buck&simple. This design is not to be used, copied or reproduced without the authority of buck&simple. Do not scale from drawings. Confirm dimensions on site prior to the commencement of works. Where a discrepancy arises, seek direction prior to proceeding with the works. This drawing is only to be used by the stated Client in the stated location for the purpose it was created. Do not use this drawing for construction unless designated.

Contact: info@buckandsimple.com
ABN : 86 106 604 025
NSW #8631 VIC #19664
www.buckandsimple.com

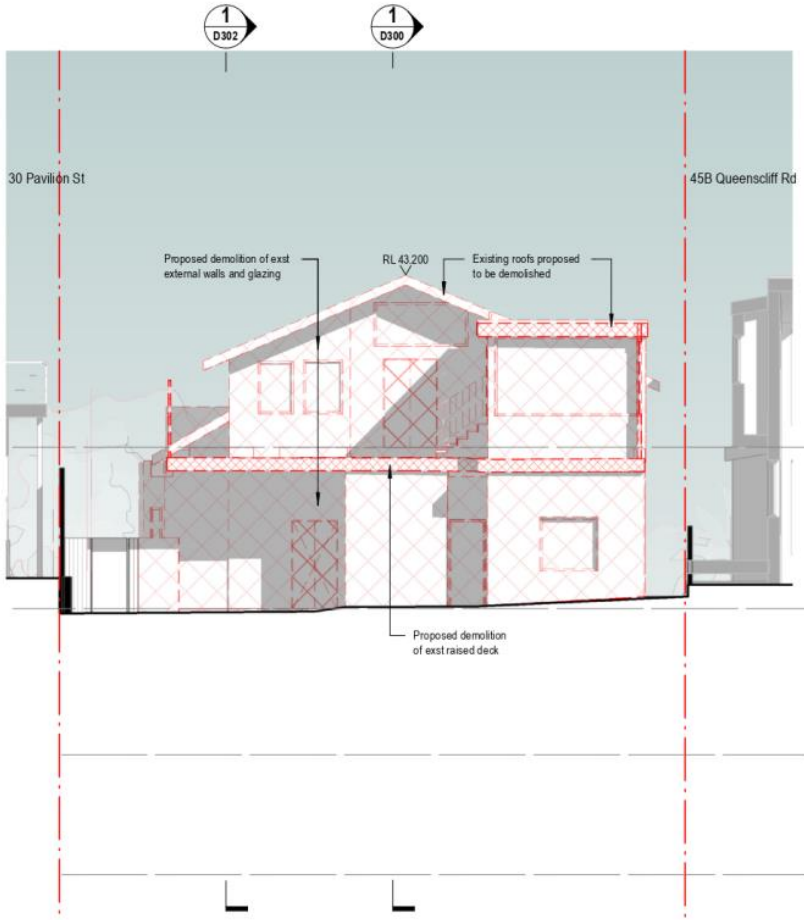
Development Application

No.	Description	Date
1	Preliminary	25 Jun 21
2	Issue for Development Application	02 Jul 21
3	Issue for Development Application Updates	24 Sep 21

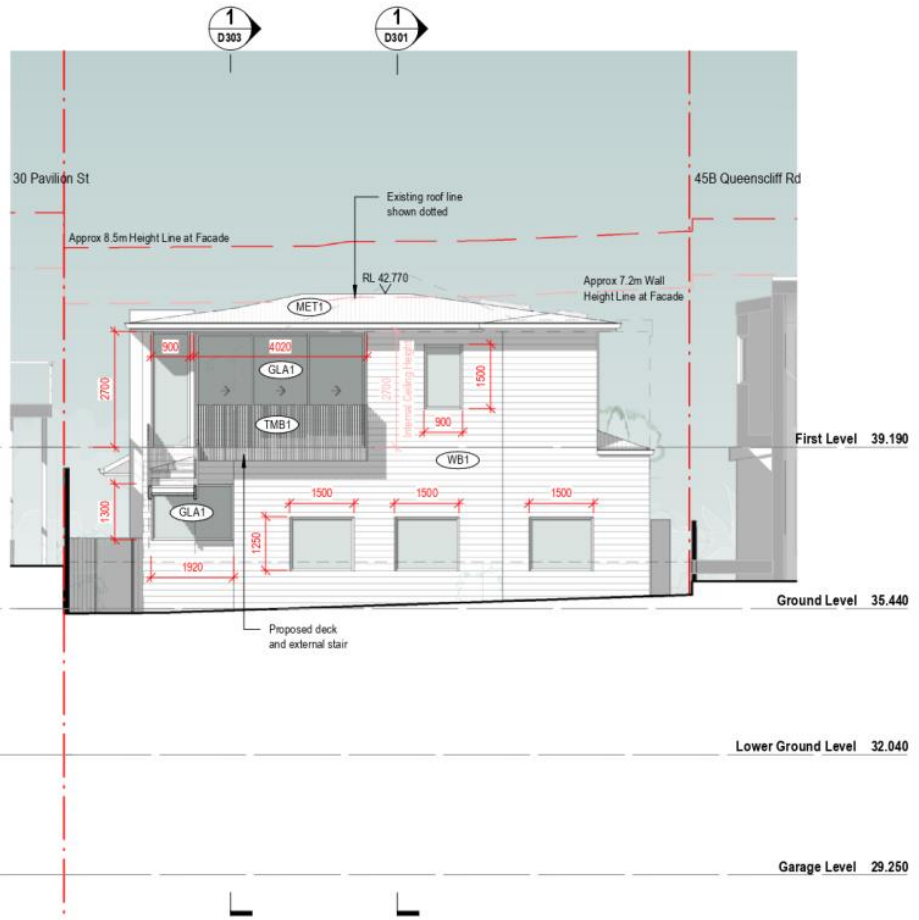
Project: **Queenscliff Residence**
Location: **43 Queenscliff Road, Queenscliff, 2096**
Client: **Chris & Stacey**
Drawing: **East Elevation - Proposed**

Scale @ A3	Drawn by	Checked by
1 : 100	BS	BS
Project Issue Date: September 2020	Sheet Issue Date: 24 Sep 21	
Project number: 1185	Drawing #: D403	Revision: 3

24/09/2021 6:25:58 PM



__1__ North Elevation - Existing & Demolition
1 : 100



__2__ North Elevation - Proposed
1 : 100

buck&simple.
doers of stuff

General Notes
The copyright of this design remains the property of buck&simple. This design is not to be used, copied or reproduced without the authority of buck&simple. Do not scale from drawings. Confirm dimensions on site prior to the commencement of works. Where a discrepancy arises, seek direction prior to proceeding with the works. This drawing is only to be used by the stated Client in the stated location for the purpose it was created. Do not use this drawing for construction unless designated.

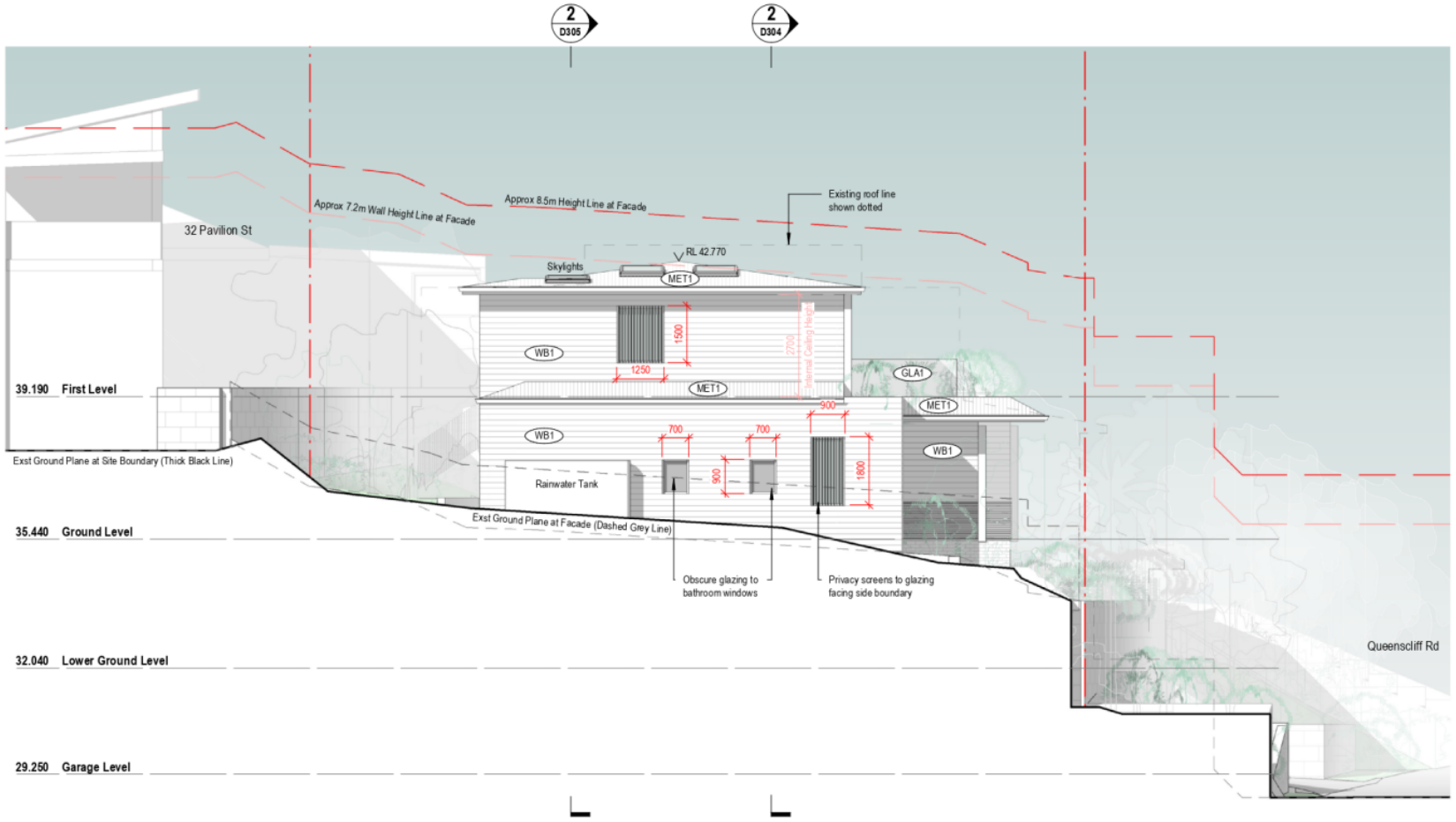
Contact: info@buckandsimple.com
ABN : 86 106 604 025
NSW #8631 VIC #19664
www.buckandsimple.com

Development Application

No.	Description	Date
1	Preliminary	25 Jun 21
2	Issue for Development Application	02 Jul 21
3	Issue for Development Application Updates	24 Sep 21

Project: Queenscliff Residence
Location: 43 Queenscliff Road, Queenscliff, 2096
Client: Chris & Stacey
Drawing: North Elevations - Existing, Demo & Proposed

Scale @ A3: 1 : 100
Drawn by: BS
Checked by: BS
Project Issue Date: September 2020
Sheet Issue Date: 24 Sep 21
Project number: 1185
Drawing #: D404
Revision: 3
24/09/2021 6:26:05 PM



buck&simple.
doers of stuff

General Notes
The copyright of this design remains the property of buck&simple. This design is not to be used, copied or reproduced without the authority of buck&simple. Do not scale from drawings. Confirm dimensions on site prior to the commencement of works. Where a discrepancy arises, seek direction prior to proceeding with the works. This drawing is only to be used by the stated Client in the stated location for the purpose it was created. Do not use this drawing for construction unless designated.

Contact: info@buckandsimple.com
ABN : 86 106 604 025
NSW #8631 VIC #19664
www.buckandsimple.com
Development Application

No.	Description	Date
1	Preliminary	25 Jun 21
2	Issue for Development Application	02 Jul 21
3	Issue for Development Application Updates	24 Sep 21

Project: Queenscliff Residence
Location: 43 Queenscliff Road, Queenscliff, 2096
Client: Chris & Stacey
Drawing: West Elevation - Proposed

Scale @ A3	Drawn by	Checked by
1 : 100	BS	BS
Project Issue Date: September 2020	Sheet Issue Date: 24 Sep 21	
Project number: 1185	Drawing #: D406	Revision: 3

24/09/2021 6:26:12 PM

ITEM 3.3	**DA2021/1140 - 72 CARRINGTON PARADE CURL CURL - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE**
REPORTING MANAGER	**REBECCA ENGLUND**
TRIM FILE REF	**2021/835381**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2021/1140 for demolition works and construction of a dwelling house on land at Lot 1 DP 366860, 72 Carrington Parade, Curl Curl, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1140

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 1 DP 366860, 72 Carrington Parade CURL CURL NSW 2096
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Nea Mary Der Sarkissian Berge Anthony Der Sarkissian
Applicant:	Toby James Breakspear

Application Lodged:	20/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	29/07/2021 to 12/08/2021
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,481,700.00

EXECTUTIVE SUMMARY

The proposed development seeks consent for demolition works and the construction of a new dwelling.

The key planning issues addressed in this report are the numerical compliance of the development and the resulting visual, amenity and view loss impacts. The proposal does not include any variations to development standards, but does include breaches of the DCP wall height, side boundary envelope, front setback and landscaped open space controls. Each of the built form non-compliances are addressed in this report.

Five submissions were received in response to the notification of the application. The concerns raised

in the submissions generally relate to the numerical non-compliances of the proposal and the associated visual bulk, view loss, privacy and traffic safety impacts.

A previous application (DA2019/0380) for a similar development on the site was refused by Council on 11 September 2019. A subsequent Class 1 Appeal of Council's refusal of DA2019/0380 was dismissed by the NSW Land and Environment Court on 25 January 2021. The assessment of the subject application has given consideration to the NSW LEC judgement.

Based on the site history and the level of opposition to the proposal, the application is referred to the Development Determination Panel for determination at the discretion of the Executive Manager, Development Assessment.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and the construction of a new dwelling as follows:

Basement

- Mechanical room
- Services

Ground floor

- Double garage
- Entry, lift & stair
- Bedrooms 01 & 02
- Bathroom
- Bedroom 03 with ensuite & robe

First floor

- Kitchen, living & dining
- Courtyard
- Laundry
- Tv room
- Terrace

Roof

- Roof terrace

External

- New driveway and crossing
- Landscaping works including new retaining walls and planting

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.1 Acid sulfate soils
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C7 Excavation and Landfill
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 - E1 Preservation of Trees or Bushland Vegetation
Warringah Development Control Plan - E10 Landslip Risk

SITE DESCRIPTION

Property Description:	Lot 1 DP 366860 , 72 Carrington Parade CURL CURL NSW 2096
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Carrington Parade. The site is irregular in shape with a frontage of 5.398m along Carrington Parade, a corner splay of 5.172m and a secondary frontage of 25.918m to Gardere Avenue. The site has a surveyed area of 280.9m².

	The site is located within the R2 Low Density Residential zone and accommodates an existing single-storey dwelling. The site slopes approximately 2m from north-west to south-east. The site does not contain any significant trees. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development along Carrington Parade and Gardere Avenue. Curl Curl Beach is located across Carrington Parade to the east.

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:

- DA2019/0380 - Demolition works and construction of a dwelling house - Refused on 11 September 2019. The application was refused due to the proposed development's inconsistency with the provisions of the WDCP built form, views and building bulk controls.
- NSW LEC Class 1 Appeal of Council's refusal of DA2019/0380 in the matter of *Der Sarkissian v Northern Beaches Council [2021] NSWLEC 1041*. The Judgement stated *"the determinative issue in this case is view loss to 2 Gardere Avenue"*, and indicated that a greater northern setback at level 1 would be required to improve the retention of views to the east from No. 2. The Judgement also found that with the provision of additional landscaped area and planting within the front setback to Gardere Avenue (by virtue of the required setback increase to

improve views), the building's streetscape presentation and building bulk would be satisfactory, and that strict compliance with the southern side building envelope is not necessary in this case. The appeal was dismissed by the Court on 25 January 2021.

- DA2021/1140 (subject application) - Demolition works and construction of a dwelling house. The assessment of the application was put on hold as Covid-19 restrictions delayed the completion of the required internal site inspections of the subject site and adjoining properties. The inspections were completed on 1 November 2021.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	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. Clause 50(1A) 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. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the

Section 4.15 Matters for Consideration	Comments
	consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. 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.
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 29/07/2021 to 12/08/2021 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 5 submission/s from:

Name:	Address:
Mr David Mayo Webb Mrs Anne Marie Webb	2 Gardere Avenue CURL CURL NSW 2096
Barry John Hodge Lynda Lillian Hodge	5 Gardere Avenue CURL CURL NSW 2096
Mr Ian Murray Sheppard	3 Gardere Avenue CURL CURL NSW 2096
Mr Cameron Graeme Inchley Nicole Louise Gemmell	4 Gardere Avenue CURL CURL NSW 2096
Carol Anne Callaghan	7 Gardere Avenue CURL CURL NSW 2096

The matters raised within the submissions are addressed as follows:

- **Non-compliance with WDCP built form controls**
  Comment: The various built form non-compliances are addressed in detail in this assessment. The non-compliances are not considered to result in any unreasonable visual or amenity impacts to surrounding properties or the streetscape. The assessment has given particular regard to the NSW LEC judgement in *Der Sarkissian v Northern Beaches Council*.

- **View loss impacts**
  Comment: The view impacts resulting from the development are discussed in detail under D7 Views. The affected views from the properties on the southern side of Gardere Avenue are generally the most vulnerable of the available views, while the affected views from the properties on the northern side of Gardere Avenue are generally the least valuable of those available. The overall level of impact is assessed as moderate-severe based on the varying levels of obstruction experienced from different properties and the areas within those properties. The assessment finds that the proposal is acceptable in relation to views and is supportable.

- **Landscaped area and proposed Banksia planting in view corridor**
  Comment: The proposal includes sufficient landscaped area to accommodate planting and mitigate the bulk of the dwelling. The Banksia trees proposed within the northern setback are considered likely to obstruct the view corridor from Nos. 2 and 4 Gardere Avenue, and conditions are imposed requiring planting of alternative species that will not impact views.

- **Visual bulk and streetscape impact, consistency with surrounding development**
  Comment: The proposal will not result in adverse visual bulk or streetscape impact, and is designed to maintain a suitable visual relationship with surrounding developments. An assessment against the relevant controls is completed in this report.

- **Traffic visibility and safety**
  Comment: The subject site includes a splayed frontage at the north-eastern corner of the site to ensure that adequate visibility is maintained at the intersection. The angular design of the dwelling adjacent to the corner splay also provides view lines through the intersection.

- **Privacy impacts and objects placed on roof terrace**

Comment: The proposed roof terrace is centrally located within the building footprint and will not allow unreasonable overlooking of adjoining properties. Further, the use of this area is not anticipated to give rise to acoustic privacy impacts beyond those of the elevated private open space areas of surrounding properties.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**No objection with conditions, subject to Planning assessment of the proposed landscaped area non-compliance.** Planning comments The proposed landscaped area breach is supportable on merit, as assessed under DCP control D1. Landscape comments The development application is for the demolition of existing structures and construction of a new dwelling and associated works. A Landscape Plan accompanies the application and is assessed as part of this Landscape Referral. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting The existing site does not contain any landscape features including no prescribed trees required for retention. One Exempt Species palm exists and this does not require Council consent for removal as proposed. The proposed landscape works include pavements, access paths, walling, and planting of native trees, shrubs and groundcovers. The Landscaped Open Space area is substantially less than the required percentage and as such the proposed landscape works will only provide sparse softening of the bulk and scale and the built form will be prominent along the streetscape, and this is to be considered by Planning based on merit assessment. The Landscape Plan includes canopy tree planting along the northern boundary at Gardere Avenue that conflicts with maintaining views to surrounding properties of the Curl Curl coast and ocean and an condition shall be imposed to either maintain the selected species at 3 metres height or preferably to substitute the proposed species with an alternative species to 3 metres height at maturity. Should the development be approved, conditions of consent shall be imposed.
NECC (Bushland and Biodiversity)	**No objection with conditions.** The application seeks approval for the demolition of existing dwelling

Internal Referral Body	Comments
	and construction of a new dwelling, new vehicular crossing and associated landscaping. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: **Biodiversity Conservation Act 2016 (BC Act)** **State Environmental Planning Policy (Coastal Management)** • Coastal Environment Area **Warringah Development Control Plan (WDCP)** • Clause E2 Prescribed Vegetation • Clause E4 Wildlife Corridors • Clause E6 Retaining unique environmental features The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. NEU - Biodiversity have no objections to the species selection within the submitted Landscape Plan (Breakspear Architects 2021). Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	**No objection without conditions.** This application was assessed in consideration of: • Supplied plans and reports • Coastal Management Act • Coastal Management SEPP (Clauses, 13, 14 and 15) • Relevant LEP and DCP clauses The application meets the requirements of the relevant Environmental Planning Instruments and policies.
NECC (Development Engineering)	**No objection with conditions.** Development Engineering has no objection to the application subject to the following conditions of consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1204405S dated 3 June 2021).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.

- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid with appropriate conditions recommended.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment:
The proposal is for the construction of a residential dwelling, and is unlikely to cause adverse impacts to the natural environment, coastal processes, water quality, vegetation and headlands, public open space, aboriginal heritage or the surf zone.

(2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

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

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

Comment:
The proposal is appropriately designed and sited to avoid unreasonable impacts in relation to the above matters.

14 Development on land within the coastal use area

(1)

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
(iv) Aboriginal cultural heritage, practices and places,
(v) cultural and built environment heritage, and

(b) is satisfied that:
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:
The proposed development is unlikely to cause adverse impacts to foreshore access and amenity, scenic qualities or aboriginal cultural built environment heritage.

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

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

Comment:The proposal is unlikely to cause increased risk of coastal hazards on the site and surrounding land.

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.48m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	No
6.4 Development on sloping land	Yes

Detailed Assessment

6.1 Acid sulfate soils

The Acid Sulfate Soil Assessment undertaken for the site concludes that the proposed development will not intercept any acid sulfate soils and will not result in the lowering of any groundwater that may be present in the area.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and
(b) to allow earthworks of a minor nature without requiring separate development consent.

Comment: The proposal involves excavation across the majority of the building footprint to a maximum depth of approximately 3.7m to accommodate the basement level. The application does not provide adequate justification for an excavated basement of this size for a single dwelling house and provides minimal detail as to the use of this space, with the exception of a mechanical room and other services that occupy a relatively small proportion of the basement area.

The proposed earthworks are contrary to 3(a) and 3(b) of this control:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality

Comment: The substantial footprint and depth of the proposed excavation across a large proportion of the site has the potential to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The extent of the proposed excavation may adversely impact the future redevelopment of the land.

Given the extent of the required excavation, limited use of the basement area indicated on the plans, and the potential for adverse impacts to environmental processes and future use of the land, the proposal is considered to include excessive and unnecessary excavation. A condition is imposed to reduce the length of the proposed basement by a total of 10m to ensure consistency with the objectives of the control.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.4m	16.7%	No
B3 Side Boundary Envelope	5m	S: Two encroachments: - FF length 12.44, up to 1.2m - Roof length 9.4m, up to 1.2m	20.3%	No
		W: Within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m	S: 0.9m	N/A	Yes
		W: 0.9m	N/A	Yes
B7 Front Boundary Setbacks	E: 6.5m	2.33m - 3.88m	64.2%	No
	N: 3.5m	GF, FF Terrace: 0.5m - 2.67m	84.7%	No
		FF: 1m - 5.05m	71.4%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% 112.36m2	11.2% 31.7m2	71.8%	No

Note: Whilst the extent of the proposed variations to the built form controls is noted, Commissioner Walsh found in *Der Sarkissian v Northern Beaches Council,* that *"due to the narrowness of the site and its position on a corner allotment, there needs to be a kind of critical openness to variations from Council's numerical building envelope controls."* The assessment of the proposed variations to the numerical controls has been guided by this consideration and given regard to the constraints of the site and the likely impacts of the development on surrounding properties.

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	No	Yes
C2 Traffic, Access and Safety	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	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	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The control permits a maximum wall height of 7.2m, measured to the underside of the ceiling of the uppermost floor. The proposal includes a wall height of 7.7m as calculated in accordance with the control. However, based on the design of the dwelling and inclusion of the roof terrace, it is considered appropriate to calculate the maximum wall height to the roof terrace balustrade and associated eastern roof parapet structure (RL 18.55), resulting in a maximum wall height of 8.4m.

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 proposed wall height breach will not result in unreasonable visual impact when viewed from adjoining properties, street frontages or nearby public spaces.

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

  Comment:

  The proposal maintains compliance with the building height control and is generally below the surrounding tree canopy level.

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

  Comment:

  The proposed non-compliant wall height will not result in an unreasonable level of view loss from surrounding properties. A full assessment of view impacts is completed under D7 Views.

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

  Comment:

  The proposal minimises impacts to surrounding properties, noting the scale of the existing single-storey dwelling and the development potential of the site.

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

  Comment:

  The proposed dwelling responds adequately to the site topography.

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

  Comment:

  The proposal provides an innovative roof design that will contribute to the visual interest of the development.

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.

B3 Side Boundary Envelope

Description of non-compliance

The proposed dwelling includes breaches of the building envelope control along the southern elevation. The first floor wall breaches the envelope by a maximum of 1.2m for a length of 12.44m, and the roof

terrace balustrade by a maximum of 1.2m for a length of 9.4m. The below merit assessment takes into account the LEC judgement that full compliance with the building envelope control is not necessary in this case.

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 envelope breaches do not result in a level of height or bulk that would cause the dwelling to become visually dominant.

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

  Comment:

  The proposal will maintain sufficient sunlight access and privacy to the adjoining property to the south.

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

  Comment:

  The proposal responds adequately to the topography.

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.

B7 Front Boundary Setbacks

Description of non-compliance

The control requires minimum front setbacks of 6.5m to the primary frontage (east) and 3.5m to the secondary frontage (north). The proposed primary front setback varies from 2.33m-3.88m. The proposed secondary front setback to the ground floor and first floor terrace varies from 0.5m-2.67m, and the first floor dwelling setback varies from 1m-5.05m.

Full compliance with the primary and secondary setback controls would severely restrict the development potential of the site (where the resulting dwelling would be unable to achieve a comparable level of accommodation and internal amenity to that of surrounding properties). Given the constraints caused by the limited dimensions and corner location of the site, it is more appropriate to undertake a merit assessment of the proposed setbacks to consider the reasonableness of the resulting visual and amenity impacts to the adjoining properties and the streetscape.

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 angular design of the proposed dwelling will maintain a sense of openness as viewed from the adjoining street frontages. The corner splay of the site and the wider, curved road reserve at the corner of Carrington Parade also provide increased separation that contributes to the openness of the streetscape.

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

  Comment:

  The primary front setback is generally consistent with the prevailing building line of developments on the western side of Carrington Parade, and the increased secondary front setback at the western side of the site provides an appropriate transition to the developments on the southern side of Gardere Avenue.

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

  Comment:

  The proposed dwelling is an innovative design solution that will protect and enhance the visual quality of the streetscape and surrounding public spaces.

- *To achieve reasonable view sharing.*

  Comment:

  The proposal achieves reasonable view sharing between surrounding properties and the available views, as assessed in this report under D7 Views.

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.

C7 Excavation and Landfill

As discussed in further detail under 6.2 Earthworks, the extent of the proposed excavation of the site is considered likely to adversely impact the natural environment. As such, a condition is imposed to reduce the footprint of the excavated basement level to ensure consistency with the objectives of this control.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposed landscaped area of 11.2% is non-compliant with the 40% control, resulting in a shortfall of 80.66m². Noting the constraints of this particular site, the proposal is considered to achieve the

objectives of the control despite the variation to the control, as discussed below. The judgement in the LEC case did not raise any concern with regard to the landscaped area breach or visual bulk.

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 proposal provides landscaped areas within the eastern and north-western front setbacks that are capable of accommodating effective screen planting that will reduce the visual bulk of the dwelling as viewed from the street frontages. The landscaped treatment of the site is commensurate with that of surrounding sites, and will result in a significant increase to the quality of plantings compared to that which currently exist.

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

  Comment:

  No high value vegetation of topographic features will be impacted. New native tree planting is proposed on the site.

- *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 proposal includes landscaped area of sufficient dimensions to accommodate the variety of vegetation types proposed to mitigate the bulk and scale of the dwelling.

- *To enhance privacy between buildings.*

  Comment:

  The proposal is appropriately designed for privacy and does not rely on vegetation for supplementary screening.

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

  Comment:

  The site contains suitable outdoor areas for recreational purposes to meet the needs of the occupants.

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

  Comment:

The proposal includes adequate landscaped and impervious areas to accommodate service functions.

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

  Comment:

  The proposal includes appropriate water management measures, subject to conditions of consent.

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.

D2 Private Open Space

The proposed private open spaces of the development exceed the minimum required 60m², but these areas generally do not meet the minimum 5m dimensions. Given the limited area and dimensions of the site, the private open spaces provided are considered to achieve the objectives of the control.

D6 Access to Sunlight

Compliance with control

The control requires that 30m² of the private open space of the adjoining dwelling to the south will receive a minimum of 3 hours of sunlight access. The proposal will result in substantial additional overshadowing of the rear yard of 70 Carrington Parade at 9am, with the extent of impact reducing throughout the day. It is also noted that No. 70 includes private open space areas orientated to the east towards the available water views that will remain unaffected by the development. The shadow diagrams supplied indicate than a minimum of 3 hours sunlight will be retained to 50% of the private open spaces of No. 70 throughout the day in accordance with the control.

D7 Views

Merit consideration

Note: The following view assessment takes into consideration the judgement of Commissioner Walsh in *Der Sarkissian v Northern Beaches Council*, and is to be read in conjunction with the appendix of view impact photos attached to this report.

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:

2 Gardere Avenue
The affected views from No. 2 include ocean views over and to the north of the existing dwelling on the subject site. The views to the north include land-water interface but are partially interrupted by vegetation to the north-east of the subject site. The views from the balcony are generally considered to be whole views, but those from the living room and kitchen are filtered and are partial views.

4 Gardere Avenue
The affected views from No. 4 include ocean views over and to the north of the existing dwelling on the subject site. The views to the north include land-water interface but are partially interrupted by vegetation to the north-east of the subject site, similar to the available views from No. 2. The views from the balcony are generally considered to be whole views, but those from the living room are filtered by vegetation and partially obstructed by the dwelling at No. 2, and are partial views.

3 Gardere Avenue
The affected views from No. 3 are primarily land-water interface at South Curl Curl rockpool and Freshwater Headland, as well as part of North Head. The affected views also include a small proportion of the available ocean views.

5 Gardere Avenue
The affected views from No. 5 include ocean views over the existing dwelling on the subject site. A partial view of North Head is available above the roof of the existing dwelling from the eastern side of the balcony and living room. The affected views are generally whole views, however they are somewhat obstructed by the existing dwellings on the subject site and No. 70 Carrington Parade.

7 Gardere Avenue
The affected views from No. 7 include ocean views over the existing dwelling on the subject site. The views from the upper level are whole views and those from the middle level are partial views.

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:

2 Gardere Avenue
The affected views are available from the first floor kitchen, living room and northern balcony. The views are obtained across a side boundary from a standing and sitting position.

4 Gardere Avenue
The affected views are primarily available from the first floor northern balcony, while the views from the living room are largely unaffected. The views are obtained across a side boundary from a standing and sitting position.

3 Gardere Avenue
The affected views are available from the first floor kitchen, living, dining & terrace, and the first floor rumpus/study and deck. The views are obtained across a front boundary from a standing and sitting position.

5 Gardere Avenue
The affected views are available from the first floor kitchen, living room and southern balcony. The views are obtained across a front and side boundary from a standing and sitting position.

7 Gardere Avenue
The affected views are available from the middle level study and balcony, and from the upper floor bedroom and balcony. The views are obtained across a front boundary from a standing and sitting position

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:

2 Gardere Avenue
The proposal will block the majority of the water views available over the subject site, with the exception of the corridor provided through the northern setback. The water views and available land-water interface to the north will be partially blocked from the living room and southern part of the balcony, but will be less affected from the centre and northern part of the balcony. The living room and kitchen views are vulnerable as they are obtained from a central position across a side boundary, and centrally through the subject site. As such, the expectation to retain the views from within the dwelling is somewhat unreasonable, despite the more significant level of impact. The overall impact to the balcony views is considered to be moderate and the impact to the living room views is severe.

4 Gardere Avenue
The proposal will block the eastern portion of the available views over the subject site. While these views are generally the least filtered, they are also the most vulnerable - being obtained across the frontage of No. 2 and through the centre of the subject site - and would likely be still be lost as a result of a fully compliant development. Similar to the loss of views from No. 2, the affected views are the most vulnerable of the available views, while the views through the front setback and further to the north will remain unaffected. The impact to the balcony views is considered to be moderate and the impact to the living room views is minor.

3 Gardere Avenue
The proposal will block the southern portion of the available land-water interface and the

western part of North Head, with the extent depending on the position within the property. The impact to water views is limited to the southern extent of South Curl Curl Beach and part of the rockpool. The substantial ocean views and land-water interface to the east of the subject site is retained. Despite the limited portion of the available views that are affected, the overall extent of impact is considered to be minor-moderate as the affected views include areas of land-water interface and part of North Head.

5 Gardere Avenue
The proposal will block the southern portion of the available views over the existing dwelling on the subject site. Despite containing a glimpse of North Head, the affected views are partially obstructed by the existing dwellings on the subject site and No. 70 Carrington Parade, while the more substantial views that are obtained to the east of the site are retained. The extent of the impact is considered to be minor-moderate.

7 Gardere Avenue
The proposal will block a small proportion of the available water views and land-water interface above the existing dwelling on the subject site. No. 7 benefits from greater elevation above the subject site, and the majority of the available water views, land-water interface and views to North Head will remain unaffected. The overall extent of the impact is considered to be minor.

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 proposal includes non-compliances with the DCP wall height, side boundary envelope, front setback and landscaped area controls. The front setback non-compliances to Carrington Parade and Gardere Avenue have the most relevance to views.

As the affected views from Nos. 2 and 4 are largely obtained through the centre of the subject site, the majority of the impact can be attributed to the complying elements of the proposal, particularly the western elevation wall and central bulk of the dwelling. It is unlikely that full compliance with the 3.5m secondary front setback control would result in substantial retention of additional views from Nos. 2 and 4. As such the angled setback to Gardere Avenue is considered to achieve reasonable retention of views.

The view impacts to Nos. 3, 5 and 7 largely relate to the non-compliant front setback to Carrington Parade. However, given the limited site area and prevailing front building lines to Carrington Parade being less than the 6.5m control, it would be unreasonable to require compliance with the front setback control in this case. The views from the properties on the northern side Carrington Parade that result from the non-compliant front setback are generally considered to be less valuable than the substantial water views that are retained to the east of the subject site. Further, an increased or fully compliant front setback would be unlikely to result in a significantly improved view outcome from Nos. 3, 5 and 7, and would still result in a loss of water views and land-water interface.

Based on the above consideration against the planning principle, the proposal is assessed as acceptable in relation to view loss.

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

  Comment:

  The proposed design incorporates suitable design solutions to minimise the extent of the resulting view loss.

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

  Comment:

  The proposal will not adversely impact any canopy trees.

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.

D8 Privacy

Compliance with control

The proposal is appropriately designed to provide visual and acoustic privacy to the occupants of the subject site and adjoining properties. The primary openings and outdoor spaces are orientated to the eastern and northern street frontages, and limited openings are proposed to the southern and western elevations. The proposed roof terrace is centrally located within the building footprint and is not anticipated to give rise to adverse acoustic or visual privacy impacts, particularly given the limited usability of the space by virtue of it's dimensions and lack of weather protection.

D9 Building Bulk

Compliance with control

The proposal incorporates suitable design measures to mitigate the visual bulk of the dwelling. The eastern and northern wall planes are appropriately modulated and the angled setback to Gardere Avenue reduces the bulk towards the western side of the frontage. The facade design incorporates vertical elements and the recessed ground floor setback provides sufficient landscaped area to accommodate planting.

E1 Preservation of Trees or Bushland Vegetation

The proposal does not involve the removal of any prescribed vegetation.

E10 Landslip Risk

The site is mapped as Landslip Risk Area A and a geotechnical investigation has been prepared for the development, the recommendations of which are incorporated into the conditions of consent.

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 $14,817 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,481,700.

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

The application seeks consent for demolition works and the construction of a new dwelling.

The key planning issues considered within the assessment are the proposed built form non-compliances and likely amenity impacts of the proposal.

Five submissions were received in relation to the development and addressed within the report.

Assessment of the application against the Warringah 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 Council as the consent authority grant Development Consent to DA2021/1140 for Demolition works and construction of a dwelling house on land at Lot 1 DP 366860, 72 Carrington Parade, CURL CURL, 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**
DA200 Roof Plan	Rev. D, 7 June 2021	Breakspear Architects
DA201 First Floor Plan	Rev. D, 7 June 2021	Breakspear Architects
DA202 Ground Floor Plan	Rev. D, 7 June 2021	Breakspear Architects
DA203 Basement Floor Plan	Rev. D, 3 May 2021	Breakspear Architects
DA300 North Elevation	Rev. D, 7 June 2021	Breakspear Architects
DA301 South Elevation	Rev. D, 7 June 2021	Breakspear Architects
DA302 East / West Elevation	Rev. D, 7 June 2021	Breakspear Architects
DA400 Sections	Rev. E, 7 June 2021	Breakspear Architects
DA500 Schedule of Colours and Materials	Rev. B, 7 June 2021	Breakspear Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. 1204405S	3 June 2021	Breakspear Architects Pty Ltd
Geotechnical Investigation, Acid Sulfate Soils Assessment and Preliminary Landslip Assessment	December 2018	STS GeoEnvironmental

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**
DA901 Landscape Plan	Rev. B, 7 June 2021	Breakspear Architects

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	28 July 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 $14,817.00 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 $1,481,700.00.

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. **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 Carrington Parade.

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. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- The proposed basement length and associated excavation shall be reduced by a minimum of 5m at both the eastern and western ends of the dwelling. The layout, services locations and A/C Grille may be amended to suit the reduced basement footprint.

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. **Vehicle Crossings Application**
The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

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

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

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

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.

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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.

Properties:
- 70 Carrington Parade, Curl Curl
- 2 Gardere Avenue, Curl Curl

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.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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. **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.

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

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

22. **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.

23. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

24. **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

25. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:
i) the proposed Banksia integrifolia shown on the Landscape Plan shall be not be planted, and shall be substituted with a native tall shrub capable of attaining 3 metres in height at maturity, and the following list is provided as suggestions: Banksia spinulosa, Leptospermum laevigatum, or Melaleuca nodosa, as contained in Council's Native Plant Species Guide - Curl Curl Ward.

Prior to the issue of any Occupation Certificate details (from a landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

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. **Certification of Landscape Plan**
Landscaping is to be implemented in accordance with the approved Landscape Plans (Breakspear Architects 2021) and these conditions of consent.

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

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

28. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) 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.

29. **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:

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

- 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.

30. **Reinstatement of Kerb**
The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

31. **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

32. **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.

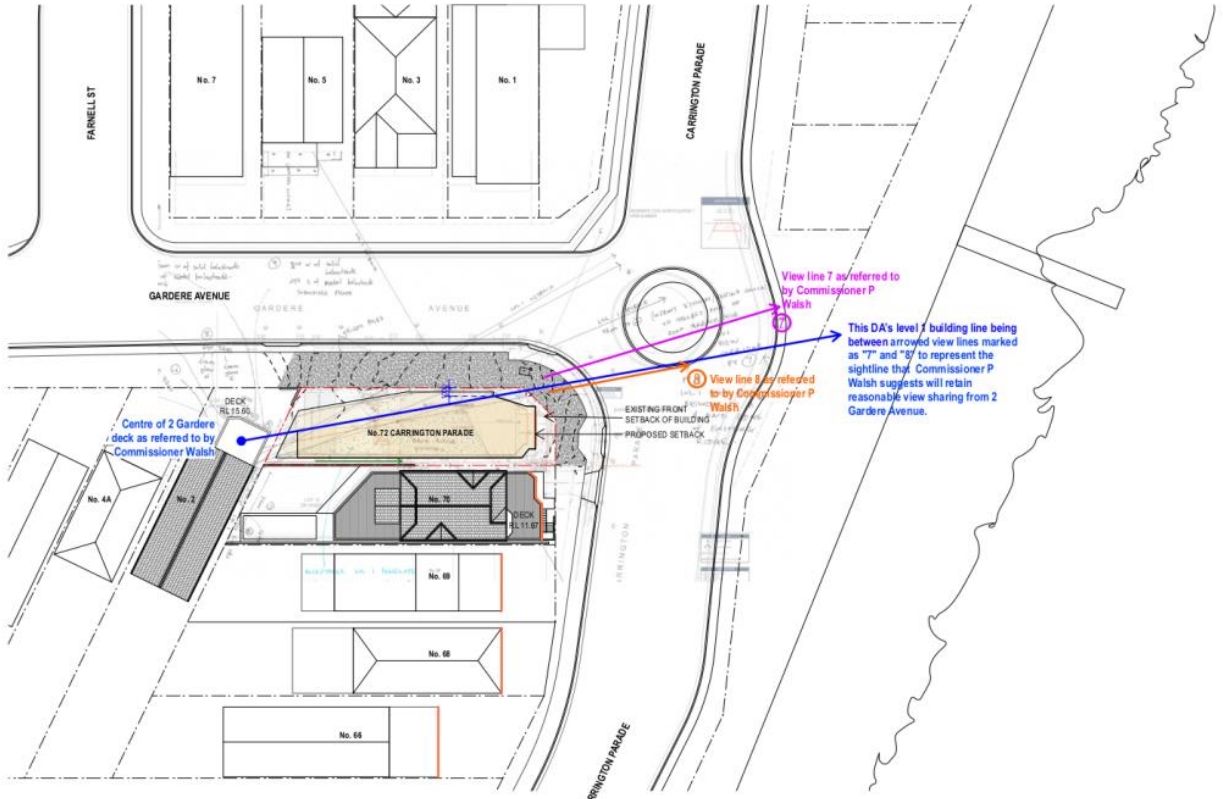
REVISED PROPOSAL IN RESPONSE TO LEC JUDGEMENT

This DA is a revised proposal to that which was before Commissioner P Walsh (File Number 201921856). It addresses the issues noted in Commissioner Walsh's judgement.

The diagrams DA 002 DA 003, DA 004 have been prepared to illustrate Commissioner Walsh's suggestion for reasonable view sharing indicating the new building line relative to lines 7 & 8 referred to in Commissioner Walsh's judgement.

The issue of view sharing from 2 Gardere Ave has been addressed with increased envelope setbacks to the level 1 and roof plan as illustrated on revised drawings DA200, DA201.

The issue of building bulk in the streetscape has been addressed with increased Gardere ave setback to the ground level floor plan as further illustrated on revised drawing DA202



1 SITE AND CONTEXT ANALYSIS PLAN
1:500

This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings, dimensions govern. Verify all dimensions on site before construction. Copyright of this drawing is vested in Breakspear Architects pty ltd.

0 5 10 25

NOT FOR CONSTRUCTION

REV	DATE	DESCRIPTION
B	07.06.21	DA SUBMISSION
A	28.05.21	DA FOR CLIENT REVIEW

STRUCTURAL ENGINEER
Cantilever Consulting Engineers
Damian Hadley
Suite 206 Pavarini Studios, 3 Gladstone St, Newtown NSW 2042
M: 0419 936 032 E: damian@cantileverengineers.com.au

PLANNING CONSULTANT
BBF Town Planners
Michael Haynes
3 Horsbrugh Way, Belrose NSW 2085
P: (02) 9986 2535 E: michael@bbfplanners.com.au

LANDSCAPE ARCHITECT
Polence Design Studio
Garth Paterson
16a/1-13 Tramore Place, Killarney Heights, NSW 2087
M: 0419 801 681 E: garth@polencedesign.com.au

ARCHITECT
BREAKSPEAR ARCHITECTS
ABN 81 601 670 991 ACN 601 670 991
Level 1, 13 The Corso, Manly NSW 2095
P: 0821 661 146 E: studio@bkspr.com

PROJECT
72 CARRINGTON PARADE, CURL CURL
LOT 1 DP 366800

PROJECT NUMBER	DRAWN	CHECKED	SHEET SCALE	SHEET SIZE
1701	AQ	TB	1:500	A3

SHEET TITLE
SITE PLAN AND LOCATION PLAN

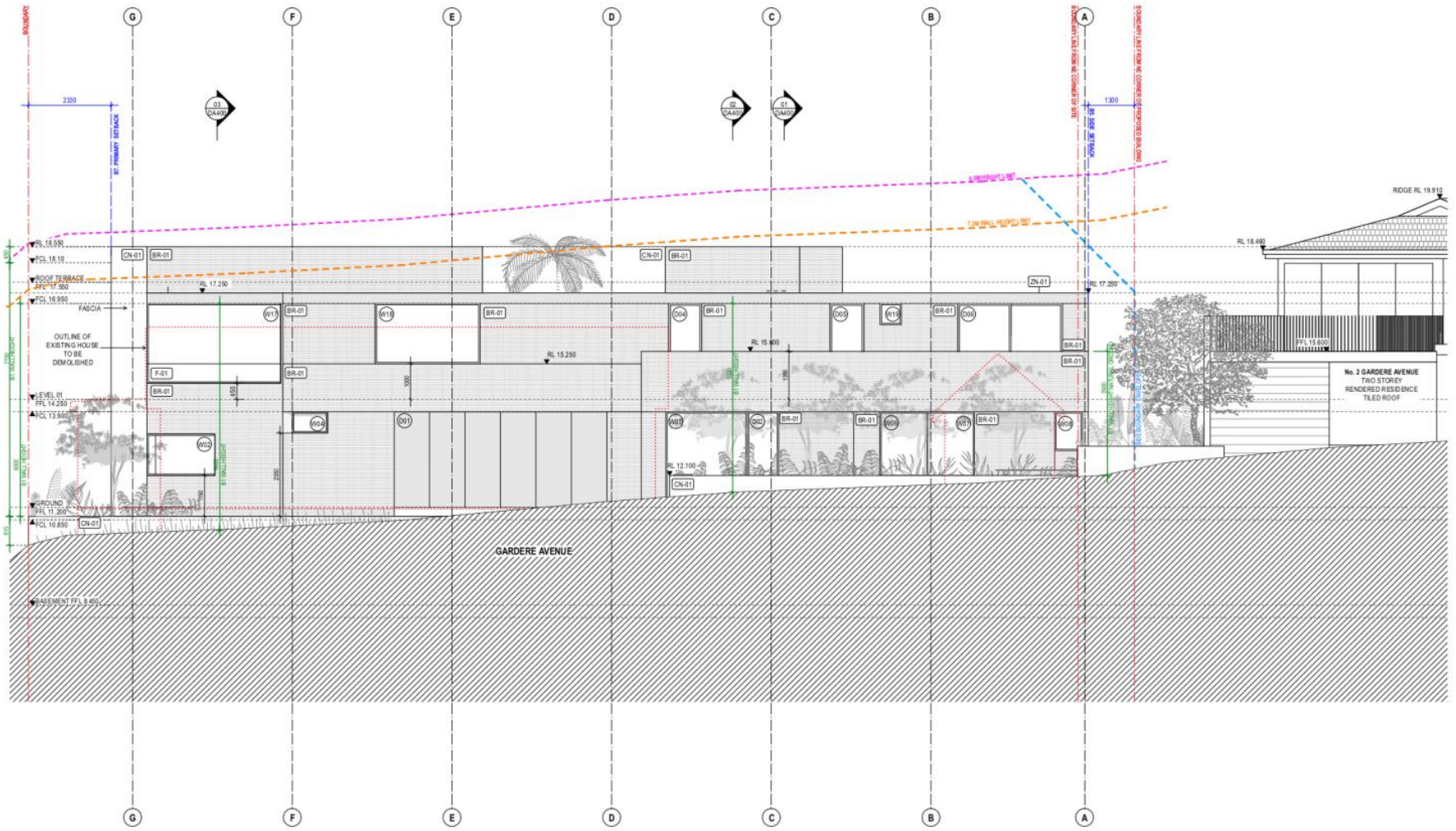
DOCUMENTATION STAGE	SHEET NUMBER	ISSUE
DA	002	B

HYDRAULIC ENGINEER
Ecological Design
John Caley
11 Clara Street, Newtown NSW 2042
M: 0418 282 356 E: john@ecologicaldesign.com.au

GEOTECHNICAL ENGINEER
STS GeoEnvironmental Pty Ltd
Matt Green
141 Coogee Bore Place, Wetherill Park, NSW 2164
M: 0405 948 884 E: mgreen@stsgeo.com.au

CIVIL ENGINEER
Donovan Associates
Scott Sharma
15 Parkes St Parramatta, NSW 2150
P: 02 9806 3000 E: scott@donovanassociates.com

CLIENT
Bergs and Nea Der Sarkissian
72 Carrington Parade, Curl Curl NSW 2099



1 NORTH ELEVATION
1:100

This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings, dimensions govern. Verify all dimensions on site before construction. Copyright of this drawing is vested in Breakspear Architects pty ltd.

NOT FOR CONSTRUCTION

REV	DATE	DESCRIPTION
D	07.06.21	DA SUBMISSION
C	28.05.21	DA FOR CLIENT REVIEW
B	03.05.21	DRAFT FOR CLIENT REVIEW
A	30.04.21	DRAFT FOR CLIENT REVIEW

STRUCTURAL ENGINEER
Cantilever Consulting Engineers
Damian Hadley
Suite 206 Pound Studios, 3 Gladstone St, Newtown NSW 2042
M: 0419 936 032 E: damian@cantileverengineers.com.au

PLANNING CONSULTANT
BBF Town Planners
Michael Haynes
3 Newbury Way, Belrose NSW 2085
P: (02) 9986 2535 E: michael@bbfplanners.com.au

LANDSCAPE ARCHITECT
Paterson Design Studio
Garth Paterson
15a/7-13 Trainore Place, Killarney Heights, NSW 2087
M: 0419 801 681 E: garth@pdsdesign.com.au

ARCHITECT
BREAKSPEAR ARCHITECTS
ABN 81 601 670 991 ACN 601 670 991
Level 1, 13 The Corso, Manly NSW 2095
P: 0821 661 146 E: studio@bkspr.com

HYDRAULIC ENGINEER
Ecological Design
John Caley
11 Clara Street, Newtown NSW 2042
M: 0418 282 356 E: john@ecologicaldesign.com.au

GEOTECHNICAL ENGINEER
STS GeoEnvironmental Pty Ltd
Matt Green
14/1 Cowpasture Place, Wetherill Park, NSW 2164
M: 0405 946 884 E: mgreen@stsgeo.com.au

CIVIL ENGINEER
Donovan Associates
Scott Sharma
15 Parkes St Parramatta, NSW 2150
P: 02 9806 3000 E: scott@donovanassociates.com

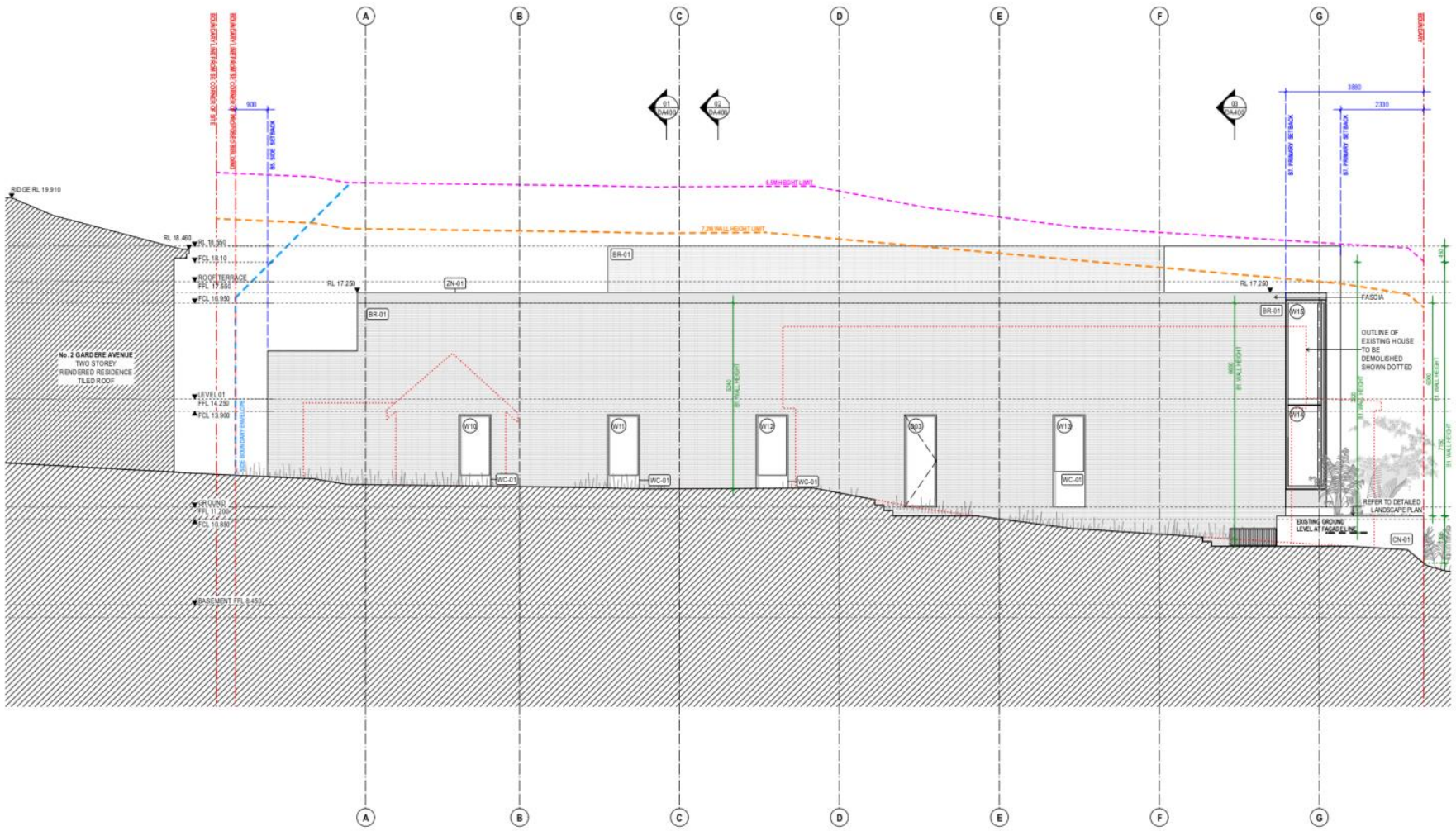
CLIENT
Berge and Nea Der Sarkissian
72 Carrington Parade, Curl Curl NSW 2099

PROJECT
72 CARRINGTON PARADE, CURL CURL
LOT 1 DP 366800

PROJECT NUMBER	DRAWN	CHECKED	SHEET SCALE	SHEET SIZE
1701	AQ	TB	1:100	A3

SHEET TITLE
NORTH ELEVATION

DOCUMENTATION STAGE	SHEET NUMBER	ISSUE
DA	300	D



1 **SOUTH ELEVATION**
1:100

0 1 2 5

This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings, dimensions govern. Verify all dimensions on site before construction. Copyright of this drawing is vested in Breakspear Architects pty ltd.

NOT FOR CONSTRUCTION

REV	DATE	DESCRIPTION
D	07.06.21	DA SUBMISSION
C	28.05.21	DA FOR CLIENT REVIEW
B	03.05.21	DRAFT. FOR CLIENT REVIEW
A	30.04.21	DRAFT. FOR CLIENT REVIEW

STRUCTURAL ENGINEER
Cantilever Consulting Engineers
Damian Hadley
Suite 206 Pound Studios, 3 Gladstone St, Newtown NSW 2042
M: 0419 936 032 E: damian@cantileverengineers.com.au

PLANNING CONSULTANT
BBF Town Planners
Michael Haynes
3 Newbury Way, Belrose NSW 2085
P: (02) 9986 2535 E: michael@bbfplanners.com.au

LANDSCAPE ARCHITECT
Peterson Design Studio
Garth Peterson
16a/1-13 Tramore Place, Killarney Heights, NSW 2087
M: 0419 801 681 E: garth@pdstudio.com.au

ARCHITECT
BREAKSPEAR ARCHITECTS
ABN 81 601 670 991 ACN 601 670 991
Level 1, 13 The Corso, Manly NSW 2095
P: 0821 661 146 E: studio@bkspr.com

HYDRAULIC ENGINEER
Ecological Design
John Caley
11 Clara Street, Newtown NSW 2042
M: 0418 282 356 E: john@ecologicaldesign.com.au

GEOTECHNICAL ENGINEER
STS GeoEnvironmental Pty Ltd
Matt Green
141 Coogee Bay Place, Wetherill Park, NSW 2164
M: 0405 946 884 E: mgreen@stsgeo.com.au

CIVIL ENGINEER
Donovan Associates
Scott Sharma
15 Parkes St Parramatta, NSW 2150
P: 02 9806 3000 E: scott@donovanassociates.com

CLIENT
Bergo and Nea Der Sarkissian
72 Carrington Parade, Curl Curl NSW 2099

PROJECT
72 CARRINGTON PARADE, CURL CURL
LOT 1 DP 366800

PROJECT NUMBER	DRAWN	CHECKED	SHEET SCALE	SHEET SIZE
1701	AQ	TB	1:100	A3

SHEET TITLE
SOUTH ELEVATION

DOCUMENTATION STAGE	SHEET NUMBER	ISSUE
DA	301	D



1 WEST ELEVATION
1:100

2 EAST ELEVATION
1:100

This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings, dimensions govern. Verify all dimensions on site before construction. Copyright of this drawing is vested in Breakspear Architects pty ltd.

NOT FOR CONSTRUCTION

REV	DATE	DESCRIPTION
D	07.06.21	DA SUBMISSION
C	28.05.21	DA FOR CLIENT REVIEW
B	03.05.21	DRAFT. FOR CLIENT REVIEW
A	30.04.21	DRAFT. FOR CLIENT REVIEW

STRUCTURAL ENGINEER
Cardno Consulting Engineers
Damian Hadley
Suite 206 Pound Studios, 3 Gladstone St, Newtown NSW 2042
M: 0419 936 032 E: damian@cardnoengineers.com.au

PLANNING CONSULTANT
BBF Town Planners
Michael Haynes
3 Newbury Way, Belrose NSW 2085
P: (02) 9986 2535 E: michael@bbfplanners.com.au

LANDSCAPE ARCHITECT
Paterson Design Studio
Garth Paterson
16a/1-13 Trainore Place, Killarney Heights, NSW 2087
M: 0419 801 681 E: garth@pdstudio.com.au

ARCHITECT
BREAKSPEAR ARCHITECTS
ABN 61 601 670 991 ACN 601 670 991
Level 1, 13 The Corso, Manly NSW 2095
P: 0821 661 146 E: studio@bkspr.com

HYDRAULIC ENGINEER
Ecological Design
John Caley
11 Clara Street, Newtown NSW 2042
M: 0418 282 356 E: john@ecologicaldesign.com.au

GEOTECHNICAL ENGINEER
STS GeoEnvironmental Pty Ltd
Matt Green
141 Coogee Bay Place, Wetherill Park, NSW 2164
M: 0405 946 884 E: mgreen@stsgeo.com.au

CIVIL ENGINEER
Donovan Associates
Scott Sharma
15 Parkes St Parramatta, NSW 2150
P: 02 9806 3000 E: scott@donovanassociates.com

CLIENT
Berge and Nea Der Sarkissian
72 Carrington Parade, Curl Curl NSW 2099

PROJECT
72 CARRINGTON PARADE, CURL CURL
LOT 1 DP 366800

PROJECT NUMBER	DRAWN	CHECKED	SHEET SCALE	SHEET SIZE
1701	AQ	TB	1:100	A3

SHEET TITLE
EAST / WEST ELEVATION

DOCUMENTATION STAGE	SHEET NUMBER	ISSUE
DA	302	D

ITEM 3.4	**DA2021/0504 - 1 UNDERCLIFF ROAD FRESHWATER - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING ON LOT 1 AND 2**
REPORTING MANAGER	**REBECCA ENGLUND**
TRIM FILE REF	**2021/835954**
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 DA2021/0504 for demolition works and construction of a dwelling on lot 1 and 2 on land at Lots 1 & 2 DP 1092166, 1 Undercliff Road, Freshwater, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0504

Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 1092166, 1 Undercliff Road FRESHWATER NSW 2096 Lot 2 DP 1092166, 1 Undercliff Road FRESHWATER NSW 2096
Proposed Development:	Demolition works and construction of a dwelling on lot 1 and 2
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:	Malcolm McKenzie Devin
Applicant:	Malcolm McKenzie Devin

Application Lodged:	17/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	06/07/2021 to 20/07/2021
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 1,110,000.00

EXECUTIVE SUMMARY

The proposal seeks consent for demolition works and the construction of two detached dwelling houses, one on each lot.

Five submissions were received in objection to the development, raising concerns with regard to privacy, solar access, view loss, landscaping and bulk and scale. A detailed assessment has been conducted and the proposal is found to be consistent with the objectives of relevant standards and controls, with no matters that would warrant the refusal of the proposed development.

As the application has received more than 3 objections and has a cost of works of more than $1 million, the application is referred to the Development Determination Panel, with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and construction of two dwelling houses (one on each lot), each with double garages, new driveway crossovers and landscaping.

AMENDED PLANS
Council wrote to the applicant on 12 October 2021 raising concern with the proposed front setback (House 1) to Undercliff Road. In response to the concerns raised the applicant submitted amended plans on 9 November 2021 increasing the front setback of house 1 at ground floor level from 2.38m - 3.8m to 3.58m - 5m. The proposed amendment constituted a reduced environmental impact and therefore, was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 1 DP 1092166 , 1 Undercliff Road FRESHWATER NSW 2096

	Lot 2 DP 1092166 , 1 Undercliff Road FRESHWATER NSW 2096
Detailed Site Description:	The subject site consists of two (2) corner allotments located on the eastern side of Dowling Street, southern side of Undercliff Road and northern side of Hill Street. Lot 1 (Undercliff Road) has an area of 289.5sqm with frontage of 16.85m to Undercliff Road and 16.78m to Dowling Street. Lot 2 (Hill Street) has an area of 278.9sqm with frontage of 15.85m to Hill Street and 16.48m to Dowling Street. The site is located within the R2 Low Density Residential zone and currently accommodates a single dwelling house. The site slopes from the Hill Street down to the Undercliff Road frontage, with a fall of approximately 5.2m. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development, predominately detached dwelling houses.

Map:



SITE HISTORY

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

DA2020/0989 - Demolition works and construction of a dwelling house on lot 1 and a dwelling house on

lot 2 (Withdrawn 17 December 2020).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	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. Clause 50(1A) 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. Additional information was requested in relation to vegetation removal and retention. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition

Section 4.15 Matters for Consideration'	Comments
	of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. 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.
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 06/07/2021 to 20/07/2021 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 5 submission/s from:

Name:	Address:
Friends Of Freshwater Inc	4 Marmora Street FRESHWATER NSW 2096
Mr Charl Justus Potgieter Mrs Kerrie Anne Potgieter	4 Hill Street QUEENSCLIFF NSW 2096
Pedro Augiar De Paula	8 / 16 Dowling Street QUEENSCLIFF NSW 2096
Mr Brett Curtis McPherson-Smith	30 Dowling Street QUEENSCLIFF NSW 2096
Miriam Bruna Cardinaletti Mrs Danielle Deegan	3 Undercliff Road FRESHWATER NSW 2096

The matters raised within the submissions are addressed as follows:

- **Built form non-compliance**
  Concern is raised in regards to the proposed setback and landscaped open space non-compliances and the resultant presentation to the streetscape. Further concerns are also expressed with regard to associated amenity impacts to adjoining properties. A detailed assessment of the proposed areas of built form non-compliance is provided against the relevant DCP control further in this report. In summary, the proposed variations to the front, rear and landscaped open space controls are supported on merit, as the objectives of the controls are otherwise achieved.

- **Bulk and scale (overdevelopment)**
  Concern is raised in regards to the overall bulk of the proposed dwelling houses. This matter is discussed in detail under the Part D9 Building Bulk section of this report. In summary, the proposed development is satisfactory given the constraints of the site.

- **Privacy**
  Concern was raised by neighbouring properties in regards to the potential overlooking between the subject site and adjoining properties. The proposal has been assessed against the privacy provisions of Part D8 Privacy of the Warringah DCP further in this report. In summary, the ground floor windows and outdoor living area of House 2 provides suitable physical separation between the subject site and the adjoining northern property to offset visual privacy.

- **Suitability of subdivison**
  Concern is raised in regards to the subdivision of the property and the potential undesirable precedent the construction of two dwelling houses would create. The application does not propose to subdivide the land, and the two separate lots are already in existence. As such, the subject application will not create an undesirable precedence with regard to the subdivision of land.

- **View Loss**
  Concern was raised in regards to the potential loss of views of Freshwater Beach. The proposal has been assessed against the view loss provisions under Part D7 of the Warringah DCP and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140. In summary, the proposal does not cause unreasonable view loss to and from private and public open space and view sharing is achieved.

  It is noted that in response to the submission, numerous attempts were made by Council to contact the objector to gain further information in relation to the concerns raised, however the objecting party was unresponsive. As such, the view loss assessment relies on Council records,

photos taken from the site inspection and plans and information provided by the applicant including the visual impact assessment prepared by Urbaine Architectural dated September 2021.

- **Solar Access**
  Concern was raised in regards to the loss of sunlight to neighbouring properties to the east (No. 3 and 5 Undercliff Road). Particular concern was raised in regards to private open space. The development application has been assessed against the solar access provisions under Part D6 of the Warringah DCP. In summary, the shadow diagrams submitted with the application demonstrate adequate solar access is provided to neighbouring properties through the winter solstice on June 21 between 9:00am and 3:00pm.

- **Landscaping**
  Concern is raised in regards to the suitability of the proposed tree planting on site. The application was referred to Council's landscape officer who reviewed the application and raised no concern with the proposed planting, subject to conditions of consent. Concern was also raised in regards to the change of level between the subject site and the adjoining eastern property. The retaining wall proposed along the eastern side of the Hill Street dwelling is not unreasonable and will not have an unreasonable visual impact when viewed from the adjoining property.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported, with conditions.** *Additional Information Comment 24/06/2021* *Amended architectural plans are noted. The Arborist's Report prepared by Botanica Tree Wise People and the Landscape Plan prepared by Greatbatch Consultancy submitted as additional information are also noted.* *The Arborist's Report indicates that four Low retention value trees are required to be removed to accommodate the works. Five Exempt tree species are also to be removed. No objections are raised to the removals as identified in the report.* *The Landscape Plans provided indicate replanting of 4 trees over the two Lots in addition to additional palms, shrubs and groundcovers.* *The Landscape Plan provided indicate that suitable planting can be accommodated on the Lots to address the planning controls and provide replacement planting for trees to be removed.* *No objections are raised to approval subject to conditions as recommended.* *Original Comment* *The proposal is for demolition of an existing building and ancillary structures, tree removal and construction of two new dwellings. The*

Internal Referral Body	Comments
	exiting dwelling is noted to be located on two Lots. One new dwelling is to be built on each existing Lot. *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* *The plans indicate removal of all but one tree from the sites. The SEE notes non-compliances with setbacks and Landscaped Open Space. The SEE also refers to an Arborist's Report, however no report was sighted with the documents viewed.* *No Landscape Plan was sighted with the application. In view of the non-compliances which affect the capacity of the site to accommodate landscaping compliant with the planning controls, Landscape Plans prepared by a suitably qualified Landscape Consultant are required to be provided. The Landscape Plans need to demonstrate that the site can still provide for the required landscape setting and replacement tree planting that are required for the development. The Landscape Plans should also indicate compliance with the requirements of the submitted Basix Certificates with regard to the Water Requirements - Landscape that form part of the Certificate.* *At this stage, the proposal is not supported due to insufficient information to enable proper assessment. If additional information is provided. further assessment can be undertaken.*
NECC (Coast and Catchments)	**Supported, with conditions.** *The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.* *Coastal Management Act 2016* *The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.* *The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.* *State Environmental Planning Policy (Coastal Management) 2018* *The subject land has been included on the 'Coastal Environment Area' but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13 and 15 of the CM SEPP apply for this DA.*

Internal Referral Body	Comments
	Comment: On internal assessment and as also assessed in the submitted Statement of Environmental Effects (SEE) report the DA satisfies requirements under clauses 13 and 15 of the CM SEPP. *As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.* *Warringah LEP 2011 and Warringah DCP 2011* *No other coastal related issues identified.* *As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.*
NECC (Development Engineering)	**Supported, with conditions.** *Development Engineering has no objection to the application subject to the following condition of consent.*

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1110402S_03 dated 28 April 2021 and NO. 1110403S_03 dated 28 April 2021).

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

Commitment	Required Target	Proposed (Undercliff)	Proposed (Hill Steet)
Water	40	42	41
Thermal Comfort	Pass	Pass	Pass
Energy	50	50	50

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed

development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

(f) Aboriginal cultural heritage, practices and places,

(g) the use of the surf zone.

Comment:
The development is located within the coastal environment area. The development will not result in any adverse impact on the items within (1)(a)-(g).

(2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

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

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

Comment:
The proposed development is not likely to adversely impact the environmental and cultural values of the 'Coastal Environment Area'.

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

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

Comment:
The development will not cause an increased risk of coastal hazards on the site or other land.

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

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	House 1 (Undercliff Road) - 6.6m House 2 (Hill Street) - 7.8m	-	Yes

Compliance Assessment

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	**House 1** 5.6m	-	Yes
		House 2 7.2m	-	Yes
B3 Side Boundary Envelope	4m (West)	**House 1** Within envelope	-	Yes
		House 2 Within envelope	-	Yes
	4m (East)	**House 1** Within envelope	-	Yes
		House 2 Within envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (West	**House 1** Ground Floor:1.88m - 2m First Floor: 3.07m	-	Yes
		House 2 Ground Floor: 2.4m - 2.57m First Floor: 4.52m	-	Yes
	0.9m (East)	**House 1** Ground Floor: 1.42m - 2.7m	-	Yes

		First Floor:4.05m		
		House 2 Ground Floor: 0.92m - 2.23m First Floor: 2.9m	-	Yes
B7 Front Boundary Setbacks	6.5m	**House 1** Garage: 0m - 1.1m Ground floor: 3.5 - 5.0m First floor:6.9m-8.51m	0 - 100%	No
		House 2 Garage: 0.64m - 0.87m Ground floor: 3m First floor: 3.75m - 6.6m	0 - 90%	No
B9 Rear Boundary Setbacks	6m	**House 1** Ground floor: 1.3m - 2.3m First floor: 3.6m - 4m	33%-82.3%	No
		House 2 Terrace: 1.2m Ground floor:3.3m - 4.1m First floor: 4.8m - 5.7m	5 - 80%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	House 1: 40% (115.8sqm)	**House 1** 17.8% (51.7sqm)	55.5%	No
	House 2: 40% (111.4sqm)	**House 2** 32.55% (90.8sqm)	18.6%	No

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

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	No	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

Description of non-compliance

Part B7 of the WDCP 2011 requires structures to be setback at least 6.5m from the front boundary.

The application proposes the following:

- **House 1** - Undercliff Road (0 - 100% variation to the numeric control)
  House (Ground floor) - 3.5m - 5.0m
  House (First floor) - 6.9m - 8.51m
  Garage - 0m - 1.1m

- **House 2** - Hill Street (0 -90% variation to the numeric control)
  House (Ground floor) -0.64m - 0.87m
  House (First floor) - 3.75m - 6.6m
  Garage - 0.64m- 0.87m

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:

  Despite the significant variation to the front setback proposed in relation to both of the dwelling houses, the development is relatively modest and is commensurate with the scale of surrounding properties and the size of both lots, and therefore it is considered that a sense of openness is maintained.

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

  Comment:

  There are several nearby properties within the vicinity which encroach the front setback, of note the adjoining property to the east which has a two storey garage and studio on the secondary street frontage. The variation sought is much lesser in scale than some other examples of the street, with both houses additional at first floor level. Therefore, notwithstanding the variation sought, the visual continuity and pattern of buildings and landscape elements in maintained.

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

  Comment:

  The works in general are found to be an overall enhancement to the street. The variation adds articulation and activation to the front facade of the building which is supported. Requiring compliance would result in a two impracticable dwelling houses. The increased front setback proposed in the amended plans submitted to Council, ensure greater consistency with the neighbouring houses to Undercliff Road. Therefore the objective is met.

- *To achieve reasonable view sharing.*

  Comment:

  The proposal will not result in any unreasonable view loss

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

B9 Rear Boundary Setbacks

Description of non-compliance

Part B9 of the WDCP 2011 requires that structures be setback at least 6m from the rear property

boundary.

The application proposes the following:

- **House 1 -** Undercliff Road (33% - 82.3% variation to the numeric control)
  House (Ground floor) -1.3m - 2.3m
  House (First floor) - 3.6m - 4m

- **House 2 -** Hill Street (5 - 80% variation to the numeric control)
  House (Ground floor) - 3.3m - 4.1m
  House (First floor) - 4.8m - 5.7m
  Terrace - 1.2m

Merit consideration:

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

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

  Comment:

  The application proposes 17.8% (House 1) and 32.55% (House 2) of the site area as landscaped open space, a significant variation to the numeric control. However, when considered against that of neighbouring properties and the constraints of the subject site, the level of deep soil landscaping across the site inparticularly the rear yard deemed satisfactory.

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

  Comment:

  The proposal provides appropriate private open space and landscaping in the rear yard.

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

  Comment:

  The proposed dwellings are generally centralised, with enhanced setbacks at first floor level to increase physical separation at first floor level. The level of amenity afforded to adjoining dwellings is considered to be preserved, as a result of the proposal.

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

  Comment:

  The siting of the dwelling and the resulting rear setback non-compliance is largely attributed to the size and shape of the allotment. The new dwellings provides a increased setbacks at first floor level to ensure the bulk of the dwellings are minimised and to allow for the dwellings to present as consistent with the siting of nearby dwellings.

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

  Comment:

  The proposal does not result in any unreasonable privacy impacts.

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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Clause D1 of the WDCP 2011 stipulates that development is to provide at least 40% (115.8sqm House 1)(111.4sqm House 2) of the site area as landscaped open space. In calculating landscaped open space landscaped areas with dimensions less than 2m are excluded from the calculation.

The application proposes 17.9% (51.7sqm) for house 1 and 32.55% (90.8sqm) for house 2, non-compliant with the numeric control

This represents a 55.5% variation to the numeric control for house 1 and 18.6% variation for house 2.

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:

  Although the proposal does not meet the numerical requirement for landscaped open space under the Warringah DCP, the proposal provides other landscaped areas to surround the site (that do not meet the minimum size requirements under the DCP) that allow for planting to enhance the streetscape. This includes landscaped areas to the front, sides and rear of the site. As such the proposal provides sufficient areas that assist in maintaining and enhancing the streetscape

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

  Comment:

  The subject site does not contain any important indigenous vegetation or landscaped features.

- *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 proposal provides a large section of landscaping to the front and rear of the property that enables opportunity for trees of a size that will mitigate the height, bulk and scale of the development. Along with the landscaped strips to the sides of the proposed development, this provides a landscaped area that is sufficient for varying shrub types.

- *To enhance privacy between buildings.*

  Comment:

  Screen planting to the rear of the site, while not relied on for visual privacy may help offset privacy between properties. The landscaped areas to the side of the development sufficiently contribute to providing space that allows for sufficient physical separation between the site and the adjoining properties. Along with the appropriate modulation of the development and minimised design in scale of the windows, this results in a development that will provide appropriate levels of privacy mitigation, despite the numerically non-compliant landscaped area

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

  Comment:

  The rear yard would provide appropriate recreational opportunities to sufficiently meet the needs of the occupants.

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

  Comment:

  The site contains a sufficient amount of space to service functions, including clothes drying.

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

  Comment:

  The proposal would allow for suitable drainage, subject to conditions imposed by Council's Development Engineers.

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

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:

  Council received one (1) submissions from surrounding residents in relation to view loss. 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:

16-18 Dowling Street Queenscliff
The nature of the view affected from this property would be distant water views to the east. The views are filtered through existing development. The view is heavily obscured by canopy trees, power lines and the sequence of roof lines between the subject site and Freshwater.

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:

16-18 Dowling Street Queenscliff
The views from this property are obtained from a front boundary (east). Views are obtained from living rooms and bedrooms.

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:

16-18 Dowling Street, Queenscliff
Water views from the first and second floor bedroom and living room units will be impacted to a minor extent.

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:

16-18 Dowling Street, Queenscliff
The proposal is compliant with the Warringah LEP 2011 Height of Building development standard as well as Warringah DCP controls (side setbacks and wall height). However the proposal does not comply with front and rear setback development controls, is reliant upon variations to this control. The current view lines from No. 16 - 18 Dowling Street, over the eastern front boundary are extremely vulnerable to any form of development on the subject property. The question of a more skillful design has been considered in that an analysis of the plans reveals that the only opportunity to maintain the existing view would be to now allow any multi storey development. While it is acknowledged that units from this property have benefited from views obtained through the subject site based on existing conditions, the area through which the views are likely to be lost are highly vulnerable to future development not only at 1 Undercliff Road, but any further development to the east to which the existing view is filtered through.

In consideration of this and having regard to the level of compliance with the Warringah LEP 2011 and Warringah DCP 2011 built from controls the application is supported on merit.

Accordingly, the provision of water views afforded to surrounding properties by the development is deemed to be acceptable.

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

  Comment:

  The proposed large articulated first floor of the development retains significant view lines for overlooking properties, improving surrounding amenity. As a result, the proposal demonstrates adequate design solutions in an attempt to develop a proposal that incorporates modern and contemporary architecture that is directly responsive to the natural topography of the land.

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

  Comment:

  Existing street trees between 16-18 Dowling Street, Queenscliff and the subject site are to be retained as part of this proposal. The trees filter the views from 16-18 Dowling Street to Freshwater.

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

  A submission in regards to privacy has been received from the adjoining Neighbour to the east (side). The Neighbour raises concerns with the rear terrace and and ground floor windows of House 2. It is considered that this level of spatial separation and northern orientation of the terrace and windows combined with existing boundary fencing would be sufficient in maintaining adequate levels of privacy within a residential environment. Compliance with this condition would further assist in mitigating privacy impacts.

  Terrace- House 2
  The proposed ground floor terrace located to the rear of the dwelling is setback 9.3m from the adjoining northern boundary, suitable separation between the subject terrace and adjoining eastern property. The proposed development will not result in the overlooking of more than 50% of the private open space of adjoining dwellings, provides adequate setbacks from either side boundary and is oriented away from neighbouring private open space. Additionally, the terrace is relatively small (2.4m - 3.8m in depth) which would not lend itself to unreasonable usage. Therefore no additional privacy measures are recommended in this instance.

  Windows - House 2
  The Control stipulates that windows of a dwelling are to be located so they do not provide direct or close views (ie. from less than 9 metres away) into the windows or private open space of other dwellings. The proposed ground floor window to the bedroom on the northern elevation (Labelled as W07) and first floor master bedroom window (labelled as W02) would result in a spatial separation of less than 9m between the adjoining dwellings' (No. 1 Undercliff Road). In this respect, it is considered appropriate to impose a condition of consent requiring this window to be fixed or frosted below 1.6m

  It is considered that the other proposed windows within the development have been appropriately designed using high sill windows, offset positioning and screening to ensure the privacy of the adjoining neighbours.

  Privacy between proposed dwellings
  House 1 has orientated there primary living area to the front of the property to ensure limit the visual and acoustic impact between the proposed dwellings. While it is acknowledged that the terrace of house 2 is setback only 1.2m from the rear property boundary and proposed at approximately 1.8m there is no above the ground floor level of House 1, it is considered acceptable given there is no primary outdoor living area to the rear of the House 1.

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

  Comment:

  The proposal, as amended via condition, will result in an appropriate design suitable for the locality.

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

  Comment:

The development provides for the personal and property security for occupants and visitors.

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.

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 proposed two storey development is both consistent and compatible with the height and scale of other adjoining and nearby dwellings. While inconsistent with a number of built form numeric controls under the Warringah DCP including front and rear setbacks, the proposal presents as a dwelling that has been sited and designed to sympathetically follow the streetscape, without unreasonably compromising the amenity of adjoining properties.

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

  Comment:

  As expressed above, the subject site is a bit of an anomaly in the subdivision pattern of the area being much smaller lots then that of the neighbouring properties, and as such, irrespective of the setbacks proposed, the proposed dwelling will never be able to contribute to the rhythm or pattern of surrounding dwellings. However, the proposal is not unreasonable or overbearing in its presentation to the streetscape when viewed from the public domain or adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this clause and accordingly, the proposed variation is supportable, 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 inconsistent 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 $11,100 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,110,000.

CONCLUSION

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

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

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

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

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

In summary, a detailed assessment has been required for the following specific issues:

- Privacy;
- Solar Access;
- Views Loss;
- Bulk and Scale; and
- Landscaped Open Space.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/0504 for Demolition works and construction of a dwelling on lot 1 and 2 on land at Lot 1 DP 1092166, 1 Undercliff Road, FRESHWATER, Lot 2 DP 1092166, 1 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**
A101/ Issue B	28 May 2021	plannedspace
A111/ Issue C	1 November 2021	plannedspace
A201/ Issue A	23 April 2021	plannedspace
A202/ Issue E	8 November 2021	plannedspace
A203/ Issue D	1 November 2021	plannedspace
A211/ Issue D	1 November 2021	plannedspace
A212/ Issue D	16 November 2021	plannedspace
A213/ Issue E	16 November 2021	plannedspace
A401/ Issue D	8 November 2021	plannedspace
A402/ Issue E	16 November 2021	plannedspace
A403/ Issue B	16 November 2021	plannedspace
A404/ Issue D	16 November 2021	plannedspace
A501/ Issue D	16 November 2021	plannedspace
A502/ Issue D	16 November 2021	plannedspace

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboricultural Report	June 2021	George Palmer, Botanics
BASIX Certificate No. 1110402S_03	28 April 2021	Thermal Environmental Engineering
BASIX Certificate No. 1110403S_03	28 April 2021	Thermal Environmental Engineering
Geotechnical Assessment	August 2020	Geotechnics 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**
01 Undercliff Rd - Landscape Master Plan/ Revision 2	8 June 2021	Greatbach Consultancy
01 Undercliff Rd -Plant Schedule/	8 June 2021	Greatbach Consultancy

Revision 2		
02 Hill Street - Landscape Master Plan/ Revision 2	8 June 2021	Greatbach Consultancy
02 Hill Street -Plant Schedule/ Revision 2	8 June 2021	Greatbach Consultancy

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	N/A

(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 $11,100.00 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 $1,110,000.00.

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.

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. **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 Dowling Street and Undercliff 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. **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 Principal Certifying Authority prior

to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **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.

10. **Vehicle Crossings Application**
The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

11. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Tree Removal Within the Property**
This consent approves the removal of the following tree(s) within the property as identified in the Arboricultural Impact Assessment dated June 2021 prepared by Botanics Tree Wise People:

i) T1 *Callistemon viminallis*; T6 *Angophora costata*; T7 *Viburnum odoratissium*; T11 *Leptospermum petersonii*

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

Reason: To enable authorised building works.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

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

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

Reason: Tree protection.

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 the Arboricultural Impact Assessment dated June 2021 prepared by Botanics Tree Wise People and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
   ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by 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. **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.

17. **Vehicle Crossings**
The Applicant is to construct two vehicle crossings 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 NL on Hill Street and A4-3330/4 EH on Undercliff Road and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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

18. **Required Planting**
a) Trees shrubs and groundcovers are to be planted in accordance with Landscape Masterplans 01 Undercliff Road and 02 Hill Street dated 08 June 2021 prepared by Greatbatch Consultancy

b) Details demonstrating compliance prepared by a qualified horticulturalist, landscape architect or landscape designer are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

19. **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.

20. **Geotechnical Certification Prior to Occupation Certificate**
A suitably qualified geotechnical consultant is to provide confirmation that the development is consistent with the recommendations of the Approved Geotechnical referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.



STATUS
DEVELOPMENT APPLICATION

© This work is copyright. Apart from any use permitted under the copyright act 1968, no part may be reproduced by any process, nor may any other exclusive rights be exercised, without the permission of plannedspace.

Do not scale drawing. Verify all dimensions on site. Report any discrepancies in documentation to architect. This drawing is for the purpose of council approval and as such, is not suitable for construction.

C	01.11.2021	ISSUE FOR DA
B	25.10.2021	ISSUE FOR DA
A	23.09.2021	ISSUE FOR DA

ISS DATE PURPOSE OF ISSUE

NOTES
1:20 @ A3 1:10 @ A1 0 0.1 0.2 0.5m

PROJECT
Enter address here

CLIENT

plannedspace
ARCHITECTS

DRAWING NO. A111
ISSUE C
JOB NO. DEV1911
DRAWN BY Author
CHECKED BY Checker
SCALE 1 : 100@ A1
DATE 01.11.2021
DRAWING TITLE SITE PLAN - NEW WORKS


A - DARK GREY WEATHERBOARD


B - LIGHT GREY WINDOW FRAMES

C - LIGHT GREY PAINT FINISH


D - LIGHT GREY COLORBOND ROOF


E - GLASS BALASTRADE


F - STONE RETAINING WALL


G - WHITE WEATHERBOARD


H - DARK GREY WINDOW FRAMES



1 400_NORTH ELEVATION_UNDERCLIFF
1 : 50



2 400_SOUTH ELEVATION_UNDERCLIFF
1 : 50

STATUS
DEVELOPMENT APPLICATION

© This work is copyright. Apart from any use permitted under the copyright act 1968, no part may be reproduced by any process, nor may any other exclusive rights be exercised, without the permission of plannedspace.

Do not scale drawing. Verify all dimensions on site. Report any discrepancies in documentation to architect. This drawing is for the purpose of council approval and as such, is not suitable for construction.

ISS	DATE	PURPOSE OF ISSUE
D	08.11.2021	ISSUE FOR DA
C	01.11.2021	ISSUE FOR DA
B	25.10.2021	ISSUE FOR DA
A	23.04.2021	ISSUE FOR DA

NOTES

PROJECT
Enter address here

CLIENT

plannedspace
ARCHITECTS

DRAWING NO	ISSUE	JOB NO
A401	D	DEV1911

DRAWN BY	CHECKED BY	SCALE	DATE
Author	Checker	@ A1	08.11.2021

DRAWING TITLE
NORTH AND SOUTH ELEVATIONS (UNDERCLIFF)


K GREY WEATHERBOARD


B - LIGHT GREY WINDOW FRAMES

C - LIGHT GREY PAINT FINISH

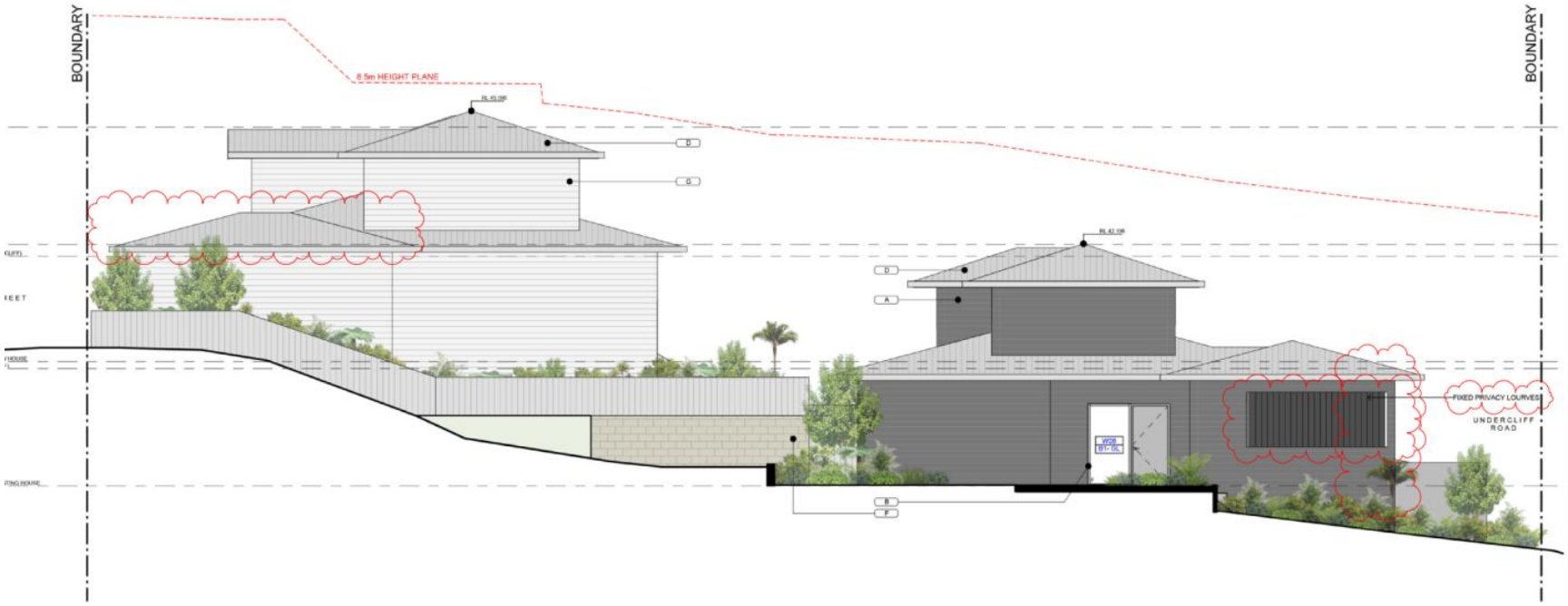

D - LIGHT GREY COLORBOND ROOF


E - GLASS BALASTRADE


F - STONE RETAINING WALL


G - WHITE WEATHERBOARD


H - DARK GREY WINDOW FRAMES



NST ELEVATION_UNDERCLIFF & HILL

STATUS
DEVELOPMENT APPLICATION

NOTES

PROJECT
Enter address here

CLIENT

plannedspace
ARCHITECTS

DRAWING NO. A402 | ISSUE E | JOB NO. DEV1911
DRAWN BY Author | CHECKED BY Checker | SCALE @ A1 | DATE 16.11.2021
DRAWING TITLE EAST ELEVATIONS (UNDERCLIFF & HILL)



A - DARK GREY WEATHERBOARD | B - LIGHT GREY WINDOW FRAMES | C - LIGHT GREY PAINT FINISH | D - LIGHT GREY COLORBOND ROOF | E - GLASS BALASTRADE | F - STONE RETAINING WALL | G - WHITE WEATHERBOARD | H - DARK GREY WINDOW FRAMES



1 400_NORTH ELEVATION_HILL
1 : 50



2 400_SOUTH ELEVATION_HILL
1 : 50

STATUS
DEVELOPMENT APPLICATION

© This work is copyright. Apart from any use permitted under the copyright act 1968, no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of plannedspace.

Do not scale drawing. Verify all dimensions on site. Report any discrepancies in documentation to architect. This drawing is for the purpose of council approval and as such, is not suitable for construction.

ISS	DATE	PURPOSE OF ISSUE
B	16.11.2021	ISSUE FOR DA
A	23.04.2021	ISSUE FOR DA

NOTES

PROJECT
Enter address here

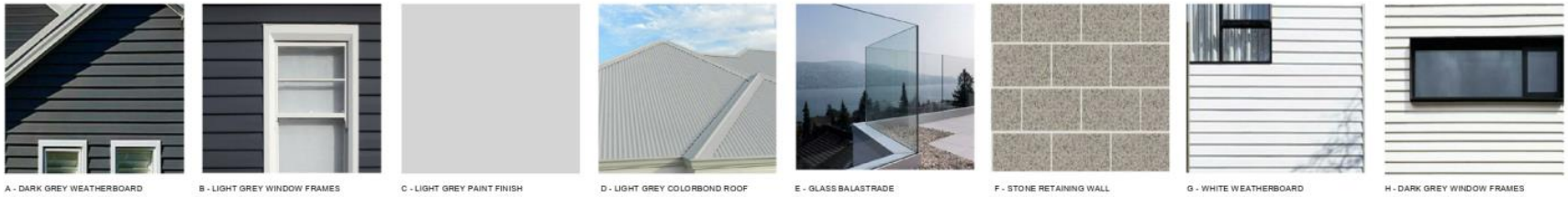
CLIENT

plannedspace
ARCHITECTS

DRAWING NO.	ISSUE	JOB NO.
A403	B	DEV1911

DRAWN BY	CHECKED BY	SCALE	DATE
Author	Checker	@ A1	16.11.2021

DRAWING TITLE
NORTH & SOUTH ELEVATIONS (HILL)





1 400_WEST ELEVATION_UNDERCLIFF & HILL
1 : 50

STATUS
DEVELOPMENT APPLICATION

© This work is copyright. Apart from any use permitted under the copyright act 1968, no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of plannedspace.

Do not scale drawing. Verify all dimensions on site. Report any discrepancies in documentation to architect. This drawing is for the purpose of council approval and as such, is not suitable for construction.

BS	DATE	PURPOSE OF ISSUE
D	16.11.2021	ISSUE FOR DA
C	01.11.2021	ISSUE FOR DA
B	25.10.2021	ISSUE FOR DA
A	23.04.2021	ISSUE FOR DA

NOTES

PROJECT
Enter address here

CLIENT

plannedspace
ARCHITECTS

DRAWING NO.	ISSUE	JOB NO.
A404	D	DEV1911

DRAWN BY	CHECKED BY	SCALE	DATE
Author	Checker	@ A1	16.11.2021

DRAWING TITLE
WEST ELEVATIONS (UNDERCLIFF & HILL)

ITEM 3.5	**DA2021/0672 - 869 PITTWATER ROAD COLLAROY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**RODNEY PIGGOTT**
TRIM FILE REF	**2021/835442**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2021/0672 for alterations and additions to a dwelling house on land at Lot 9 DP 12985, 869 Pittwater Road, Collaroy, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0672

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 9 DP 12985, 869 Pittwater Road COLLAROY NSW 2097
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Anthony James Lupton Janice Lupton
Applicant:	Your Style Designer Home Additions

Application Lodged:	27/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/06/2021 to 17/06/2021
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 257,800.00

EXECUTIVE SUMMARY

The application seeks development consent for alterations and additions to the existing dwelling house including the construction of an upper floor addition and internal layout changes.

The application is referred to the Development Determination Panel at the discretion of the Executive Manager due to the receipt of a submission from a non-planning Council staff member.

The key planning issue of this proposal is view loss impact from dwellings to the rear of the subject site.

Public exhibition of the proposal resulted in the receipt of four (4) submissions, all of which raise view loss as the primary planning concern. Concerns were also raised regarding the bulk and scale of the

proposal.

In response to view loss concerns, the applicant submitted a revised design to assist in reducing the extent of view impacts. This includes the increase of the side setbacks of the upper floor addition and the change of roof from from a hipped roof to a low-profile skillion roof. All objectors were given the opportunity to comment on the amended plans.

The proposal, as amended, has been found to be consistent with the objectives of all relevant legislation, plans and policies and is recommended for approval, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling house including the construction of an upper floor addition and internal layout changes.

AMENDED PLANS

Due to concerns regarding unreasonable view loss impacts, Council requested the applicant to submit a revised design of the proposed first floor addition to reduce the impact of the development on the view corridors enjoyed by properties to the north of the site.

The applicant submitted a revised design which incorporates increase side setbacks of the upper floor addition and a change in the proposed hipped roof form to a low profile skillion roof form. The redesign reduces the ridge height of the proposal by 1.02m.

In accordance with the provisions of the Northern Beaches Community Participation Plan, as the amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain, re-notification of the application was not required. However, all objectors were informally notified of the amended plans and were given the opportunity to respond.

ASSESSMENT INTRODUCTION

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

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

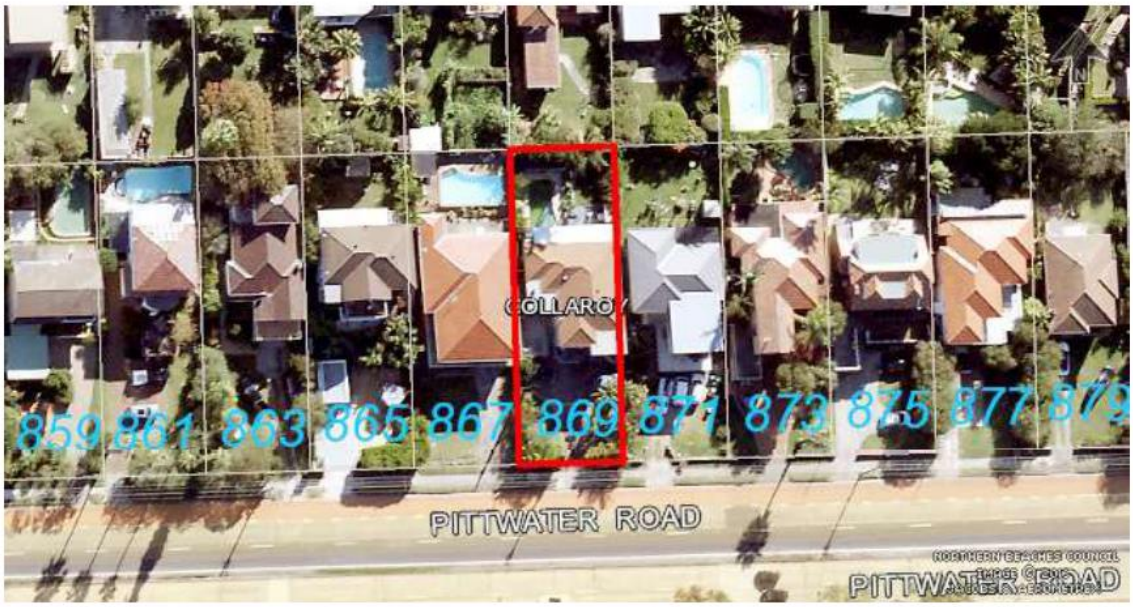
SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 9 DP 12985 , 869 Pittwater Road COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Pittwater Road. The site is regular in shape with a frontage of 14.935m along Pittwater Road and a depth of 45.72m. The site has a surveyed area of 682.8m². The site is located within the R2 Low Density Residential zone and accommodates part one and two storey residential dwelling with a swimming pool. The site falls approx. 6.5m from the north towards the south. The site contains front setback area that incorporates landscaping, gardens and some trees on the sides of the central driveway. The rear yard contains a swimming pool and decks with lawn and garden areas throughout. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development

Section 4.15 Matters for Consideration'	Comments
Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	consent. These matters have been addressed via a condition of consent. Clause 50(1A) 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. Additional information was requested in relation to revised architectural plans. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. / This clause is not relevant to this application. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. 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	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration'	Comments
suitability of the site for the development	
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Ronald Coffey, dated 01/05/2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/06/2021 to 17/06/2021 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:
Withheld Withheld	COLLAROY NSW 2097
Withheld Withheld Withheld Withheld	BELROSE NSW 2085
Mr Hani Alchikh	43 Cumberland Avenue COLLAROY NSW 2097
Paul Andrew Davies Mrs Julie Louise Davies	47 Cumberland Avenue COLLAROY NSW 2097

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

- View loss

- Bulk and scale

One submission has been received from a Council staff member. It has been determined that the staff member does not undertake work that involves exercising functions of EPA Act and is therefore not categorised as planning staff. As such, the application is able to be assessed internally by Council planning staff.

The matters raised within the submissions are addressed as follows:

- *Concerns are raised that the proposed development will cause unreasonable view loss to surrounding dwellings.*

  Comment:

  It is acknowledged the proposed development will cause impact to existing view corridors enjoyed by adjacent dwellings on the southern side of Cumberland Avenue.

  A detailed view loss assessment is included in this report under Part D7 of WDCP.

- *Concerns are raised that the proposed development has an excessive bulk and scale and is an overdevelopment of the site.*

  Comment:

  The applicant has submitted an amended design to the upper floor addition that substantially reduces the bulk and scale of the development. The amended design increases the side setbacks of the first floor addition and changes the proposed roof form from a hipped design to a low-profile skillion design. These changes reduce the extent of the side building envelope non-compliance on the east elevation and is compliant on the west elevation. The overall height of the building is reduced by 1.02m through the change in roof form. As such, the bulk and scale of the amended design is considered to appropriately respond to the development control requirements and objectives.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: **Biodiversity Conservation Act 2016 (BC Act)** **State Environmental Planning Policy (Coastal Management)** • Coastal Wetlands Proximity Area **Warringah Development Control Plan (WDCP)** • Clause E2 Prescribed Vegetation

Internal Referral Body	Comments
	• Clause E6 Retaining unique environmental features The application seeks to establish an Asset Protection Zone in perpetuity over the entirety of the site. As the site is already highly modified, it is considered that impacts to biodiversity to establish an APZ would be negligible in this case. Proposed alterations to the dwelling are located within the existing footprint and will not result in an additional impact to biodiversity or nearby biodiversity values. Subject to conditions the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.
NECC (Coast and Catchments)	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. Comment: As assessed in the submitted Statement of Environmental Effects (SEE) report, the DA 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 State Environmental Planning Policy (Coastal Management) 2018.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. This application is recommended for approval as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Dee Why Lagoon.
Property Management and Commercial	The proposal is for a new dwelling on the subject site. Property have no objection to the proposal as submitted.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject property is located opposite a heritage conservation area **C5 Dee Why Lagoon and Reserve**

Internal Referral Body	Comments

Details of heritage items affected

Details of the item as contained within the Warringah inventory is as follows:

Statement of significance:
The Australian Heritage Commission states in its official statement of significance that: 'Dee Why Lagoon is one of the best examples, in the Sydney Region, of an estuarine lagoon. It is one of the few large estuarine barrier lagoons, remaining in good condition, in the Sydney Region.

Physical description:
The Dee Why Lagoon is an extensive waterbody located behind the sand dunes of Dee Why beach, receiving stormwater run-off and drainage from the ridge to the west of it. Dee Why Lagoon is one of the largest barrier lagoons within the Sydney Region with a maximum surface area of 30ha and a maximum depth of 1.5m. It has a largely urbanised catchment of 500ha.

Other relevant heritage listings

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No	
NSW State Heritage Register	No	
National Trust of Aust (NSW) Register	Yes	Dee Why lagoon and reserve is on the register
RAIA Register of 20th Century Buildings of Significance	No	
Other	N/A	

Consideration of Application

The proposal seeks consent for alterations and additions to the existing dwelling. The property is separated from the heritage conservation area via the 6 lanes of Pittwater Road. Given the separation, the proposal is considered to not impact upon the heritage item or its significance.

Therefore Heritage raises no objections and requires no conditions.

Consider against the provisions of CL5.10 of WLEP.

Is a Conservation Management Plan (CMP) No
Required? Has a CMP been provided? No
Is a Heritage Impact Statement required? No
Has a Heritage Impact Statement been provided? No

Further Comments

Internal Referral Body	Comments
	COMPLETED BY: Brendan Gavin, Principal Planner DATE: 28 May 2021

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

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. A413029_03, dated 03/11/2021). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

Refer to Coast & Catchments comments for CM SEPP consideration.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.02m	N/A	Yes

Compliance Assessment

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.7m	6.9%	No
B3 Side Boundary Envelope	E - 4m	Outside envelope	Nil to 7.9%	No
	W - 4m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	E - 0.9m	GF - 1.07m (existing)	N/A	Yes
		FF - 2.3m	N/A	Yes
	W - 0.9m	GF - 1.25m (existing)	N/A	Yes
		FF - 2.44m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	GF - 15.7m (existing)	N/A	Yes
		FF - 23.67m	N/A	Yes
B9 Rear Boundary Setbacks	6m	14.6m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (273.1m^2)	25% (171m^2) [existing]	37.4% (102.1m^2)	As existing

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	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
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

This clause requires that walls do not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building.

The proposed maximum wall height is 7.7m on the west elevation and 7.5m on the east elevation, representing a variation of 6.9% and 4.2% respectively.

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 occurs is largely caused by the fall of the site from north to south and the elevated nature of the ground floor of the existing dwelling.

  Notwithstanding the non-compliance, it is considered the 2.44 to 3.53m setback of the first floor addition of from the west side boundary and 2.3m to 3.47m setback to the east side boundary will mitigate visual dominance of the building on the lower level properties and provides sufficient spatial separation.

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

  Comment:

The height of the proposed development remains below the canopy level.

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

  Comment:

  The proposed development will not result in any unreasonable view impacts, as discussed in greater detail under Part D7.

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

  Comment:

  As discussed, the development is suitably designed and sited to minimise impacts to adjoining and nearby properties.

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

  Comment:

  The development is sited to minimise excavation depth and the overall height of the dwelling. The dwelling responds appropriately to the topography of the site.

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

  Comment:

  The proposed low-profile skillion roof form is an example of modern architectural design and is considered to demonstrate roof form diversity in the locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and 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.

B3 Side Boundary Envelope

Description of non-compliance

The control requires that a building must be sited within the building envelope which is determined by projecting planes at 45º from a height of 4.0m above the ground level at the side boundary.

The proposed first floor addition encroaches into the side boundary envelope along the east elevation to a height of 0.5m for a length of 2.4m, representing a variation of up to 7.9%.

The control allows for consent to be granted for the addition of a second storey to an existing dwelling house that to a minor extent does not comply with the requirement of this control.

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 non-compliance with the building envelope control is not found to cause any unreasonable visual impacts. The dwelling is beneath the maximum permissible building height, appropriately setback from the side boundary and is sufficiently articulated to satisfy the objective. The overall built form is generally consistent with that of surrounding development.

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

  Comment:

  The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintained solar access in accordance with the DCP requirements.

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

  Comment:

  The proposed development does not require alteration to the natural topography of the site. It is considered that the proposal is appropriately stepped to respond to the site topography. No unreasonable streetscape or amenity impacts are expected to arise as a consequence of the development.

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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The control requires the minimum landscape open space (LOS) as being of 40% (273.1m^2) of the site area with minimum dimensions of 2 metres.

The existing development on the site does not achieve required LOS (25%). The proposed development does not alter the existing LOS on the site.

Merit consideration

As the built form is to be wholly within the existing building footprint, it is not considered that any existing landscaping on the site would be detrimentally impacted by the works. Therefore, it is considered the proposed development generally achieves consistency with the control objectives.

D7 Views

Description of non-compliance

Several submissions have been received raising concerns regarding unreasonable view loss caused by the proposed development.

To understand the extent of potential view loss, inspections were undertaken from the dwellings at the following properties:

- 39 Cumberland Avenue
- 41 Cumberland Avenue
- 43 Cumberland Avenue
- 47 Cumberland Avenue

Council requested the installation of height poles to assist in determining the extent of the view impact of the proposed development.

As a result of these inspections, the applicant was requested to revise the design of the proposed first floor addition to reduce the extent of the side building envelope non-compliance by increasing the side setbacks of the addition to help maintain the view corridor between buildings and lower the overall building height to minimise impact to view loss over the top of the building.

The following view loss assessment considers the proposed development as depicted in the amended plans submitted by the applicant.

Merit consideration

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

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

  Comment:

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

  1. Nature of the views affected

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

  Comment to Principle 1:

The view corridor affected is towards the south and include distant views of the ocean horizon, coastal fringe, Dee Why Headland and foreground views of parts of Dee Why Lagoon and ranges between the southeast and southwest for most of the inspected dwellings. Portions of these views are enjoyed by all of the above properties and are generally 'filtered' by existing buildings and vegetation to varying extents. The view corridor is considered to be of high value.



Photo 1. Indicative image of view corridor taken from first floor of 41 Cumberland Avenue. The subject site is on the left side of the photo.

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 following is a view analysis from each inspected property:

39 Cumberland Avenue

This property is located to the northwest of the subject site and to the east of 41 Cumberland Avenue. The property contains a two-storey dwelling. Views from this property are obtained from both the ground and first floors, however views from the ground floor are substantially filtered by existing trees and vegetation. Filtered views towards the ocean horizon to the southeast are obtained from the ground floor kitchen. This view corridor is obtained from a standing position at an oblique angle across multiple side and rear boundaries. Panoramic views from the southeast to the west are obtained from the first floor rear balcony and living area. Portions of this view are obstructed by existing buildings and vegetation, but the view as a whole

is considered to be largely unimpeded.

41 Cumberland Avenue

This property is located adjacent to the subject site to the northwest. The property contains a two-storey dwelling. The views obtained from this dwelling are similar to that of the dwelling at 39 Cumberland. The angle of the view corridor towards the proposed development is less oblique but still crosses over a side and rear property boundary. The proposed development will cause the most significant impact to views from the ground floor including the kitchen and living area. Sitting position views will be more significantly impacted than standing views. Views from the first floor bedrooms and balcony are expected to be impacted to a much lesser by the proposed development. Views of the ocean horizon, Dee Why Headland and Dee Why Lagoon from the first floor are expected to be mostly unimpeded.

43 Cumberland Avenue

This property adjoins the subject site to the north and contains a single-storey dwelling. The view corridor enjoyed by this dwelling is significantly obscured by existing buildings and vegetation. The proposed development is expected to have the greatest impact on the view of Dee Why Headland enjoyed from the kitchen and living area. This view corridor is obtained from a standing position across the rear boundary. Glimpses of the ocean and horizon between buildings and vegetation are obtained from the kitchen towards the southeast. Glimpses of Dee Why Lagoon are obtained towards the southwest between the dwellings at 867 Pittwater Road and 865 Pittwater Road. Both of these view corridors will not be impacted by the proposed development.

47 Cumberland Avenue

This property is located to the northeast of the subject site and to the east of 45 Cumberland Avenue. The property contains a two-storey dwelling. The primary living areas of this dwelling are located at the first floor. Views from this dwelling are substantially filtered between buildings and vegetation. The proposed development is expected to impact upon existing views of Dee Why Lagoon to the southwest. This view is obtained from a standing position at an oblique angle across multiple side and rear boundaries. Views of Dee Why Lagoon and headland directly to the south will not be impacted by the proposed development.

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 proposed development is expected to cause the greatest impact to existing views obtained from the ground floor of each inspected dwelling. The proposed development is likely to cause view loss from the ground floor living areas and kitchens of the inspected dwellings. This impact will be the greatest on the dwelling at 43 Cumberland. As it is single-storey, there is no opportunity for views to be obtained above the proposed development. The extent of the view

impact on the other dwellings is substantially less due to the views obtained above the proposed development from their first floors.

While the proposed development is expected to cause the greatest impact to the views obtained from the living areas and kitchens of these dwellings, the impact is considered reasonable in the context of the site and surrounds. It is not a reasonable expectation that dwellings along this portion of Pittwater Road will never be redeveloped in a similar nature in the future. As such, the existing view corridor is considered to be highly volatile in its current setting.

In light of the above assessment, the proposed development is expected to cause a minor-to-moderate impact to the existing views of the dwellings to the rear of the subject site.

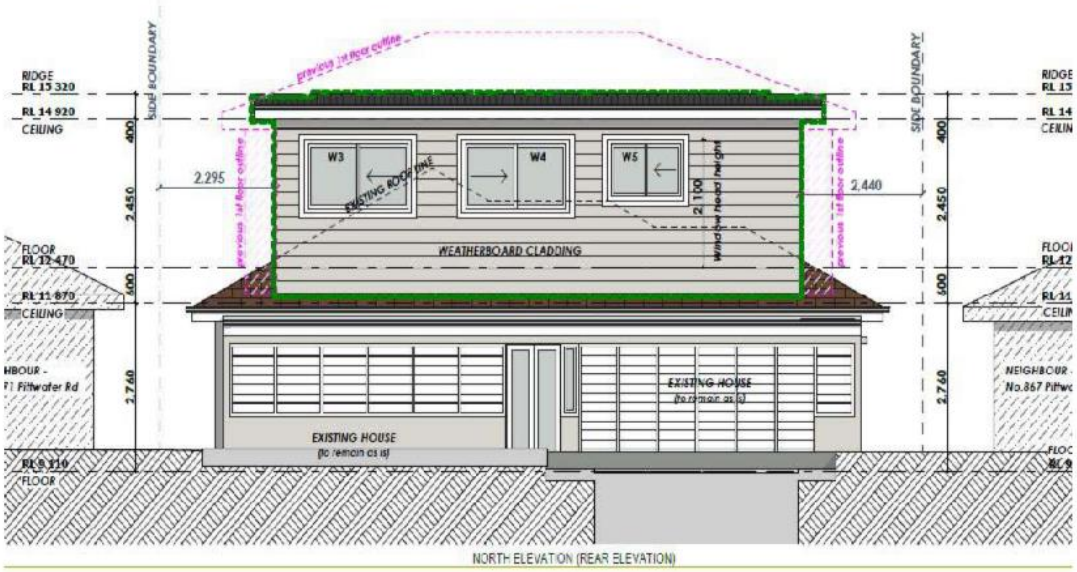
4. Reasonableness of the proposal that is causing the impact

"*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 design and siting of the proposed development has been amended to assist in reducing the extent of the view impact compared to that of the original proposal, as indicated in pink in the plan extracts below.







The side setbacks of the first floor addition have been increased to improve separation between buildings and help minimise impact to view corridors between buildings. Additionally, the proposed roof has been revised from a hipped design to a low-profile skillion roof form. This reduces the overall height of the building by 1.02m compared to the original proposal.

While the expected impact on views by the proposed development is considered to be minor-to-moderate, the revised design appropriately responds to Council's concerns by reducing the extent of view impact. An alternative design is unlikely to further reduce view impacts from adjacent and nearby dwellings to a significant extent. As such, the impact of the proposed development on existing view corridors is considered to be reasonable in the context of the site and surrounds.

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

Comment:

The proposed development is considered to incorporate innovative design solutions to help minimise the view impact on surrounding dwellings.

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

  Comment:

  No vegetation is required to be removed to facilitate the proposed development.

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

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 $2,578 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $257,800.

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

The proposal seeks alterations and additions to a dwelling house including a first floor addition. The proposal involves variation to the side boundary envelope and wall height which is mostly influenced by the steep topography of the site. The side setbacks of the first floor addition have been increased to limit the extent of the boundary envelope non-compliance.

Concerns regarding view sharing, bulk and scale and amenity issues raised in submissions have been addressed to ensure no unreasonable impacts on surrounding land.

In conclusion, the principal issues in the assessment have been addressed and, subject to conditions, the alterations and additions will not create any unreasonable built form or amenity impacts pursuant to WLEP 2011 and WDCP.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/0672 for Alterations and additions to a dwelling house on land at Lot 9 DP 12985, 869 Pittwater Road, COLLAROY, 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**
Dwg No. 3 - Site Plan	05/11/2021	Your Style Designer Home Additions
Dwg No. 4 - Waste/Demo/Construction Plan	05/11/2021	Your Style Designer Home Additions
Dwg No. 5 - Lower Level Plan	05/11/2021	Your Style Designer Home Additions
Dwg No. 6 - Ground Floor Plan	05/11/2021	Your Style Designer Home Additions

Dwg No. 7 - First Floor Plan	05/11/2021	Your Style Designer Home Additions
Dwg No. 8 - Sections	05/11/2021	Your Style Designer Home Additions
Dwg No. 9 - Sections	05/11/2021	Your Style Designer Home Additions
Dwg No. 10 - Elevations	05/11/2021	Your Style Designer Home Additions
Dwg No. 11 - Elevations	05/11/2021	Your Style Designer Home Additions
Schedule of Finishes	05/11/2021	Your Style Designer Home Additions

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A413029_03	03/11/2021	Your Style
Bushfire Risk Assessment Report (Ref: 1431-DA)	01/05/2021	Ronald Coffey
Preliminary Geotechnical Assessment (Ref: QP 00218A)	24/05/2021	Hodgson Consulting Engineers

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	25/05/2021	Your Style Designer Home Additions

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	08/06/2021

(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 $2,578.00 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 $257,800.00.

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

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

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

Authority prior to the issue of the Construction Certificate.

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

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

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

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

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

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

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

Reason: To ensure satisfactory management of stormwater.

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

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

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

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

9. **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.

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

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **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.

13. **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.

14. **Waste Management During Development**
The reuse, recycling or disposal of waste during works must be done generally in accordance

with the Waste Management Plan for this development.

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

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

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

15. **No Weeds Imported On To The Site**
No Priority or environmental weeds are to be imported on to the site prior to or during construction works.

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

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

17. **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.

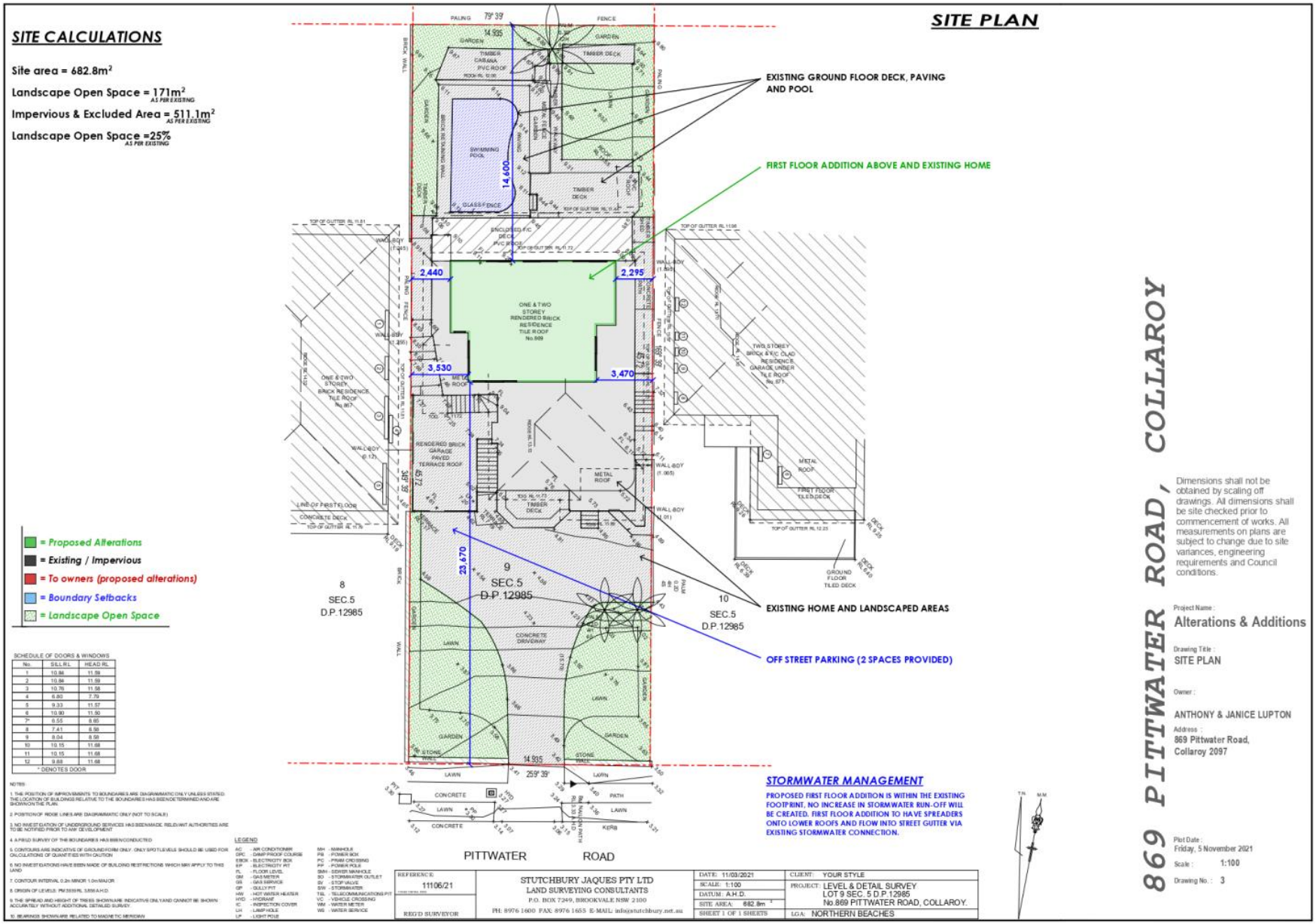
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior

to the issue of any interim / final Occupation Certificate.

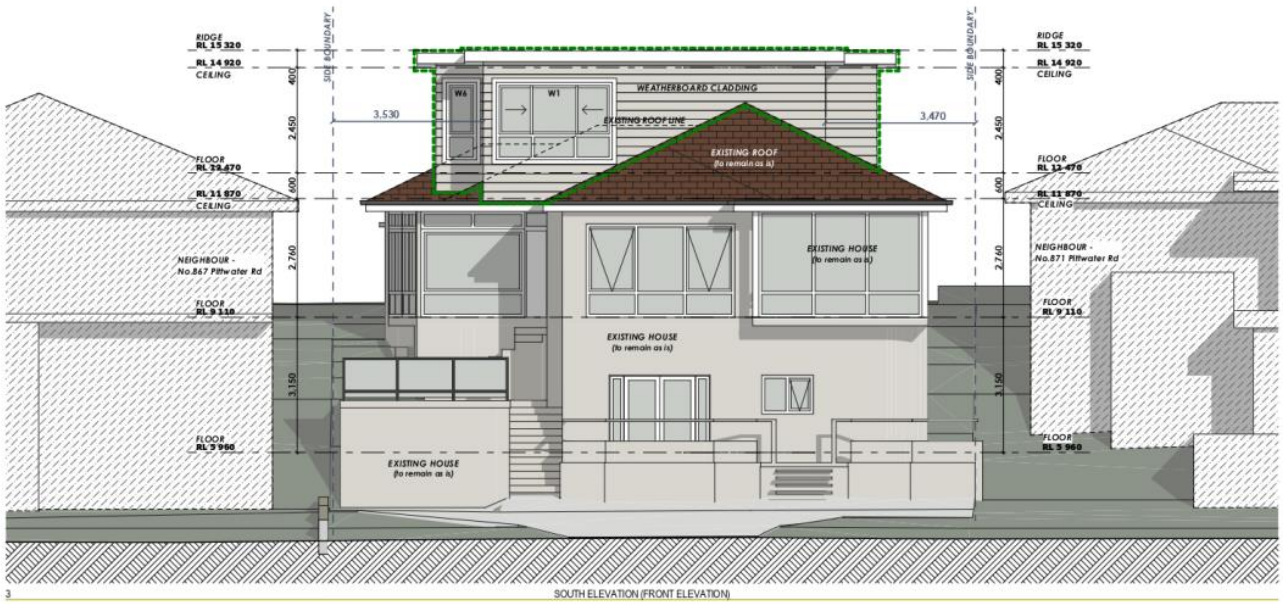
Reason: To ensure bushland management. (DACPLF01)

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

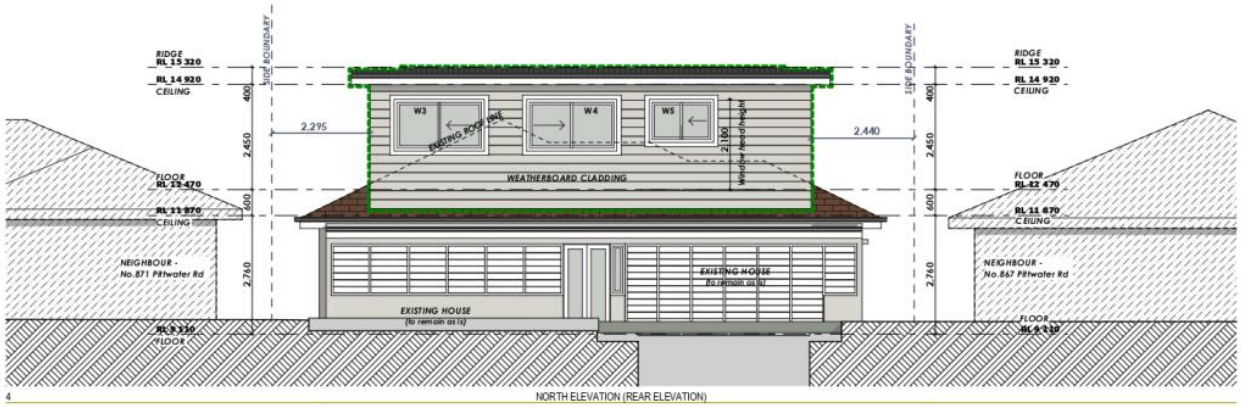
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.


SITE CALCULATIONS
Site area = 682.8m²
Landscape Open Space = 171m² AS PER EXISTING
Impervious & Excluded Area = 511.1m² AS PER EXISTING
Landscape Open Space =25% AS PER EXISTING
SITE PLAN
EXISTING GROUND FLOOR DECK, PAVING AND POOL
FIRST FLOOR ADDITION ABOVE AND EXISTING HOME
EXISTING HOME AND LANDSCAPED AREAS
OFF STREET PARKING (2 SPACES PROVIDED)
= Proposed Alterations
= Existing / Impervious
= To owners (proposed alterations)
= Boundary Setbacks
= Landscape Open Space
8 SEC.5 D.P.12985
9 SEC.5 D.P.12985
10 SEC.5 D.P.12985
PITTWATER ROAD
STORMWATER MANAGEMENT
PROPOSED FIRST FLOOR ADDITION IS WITHIN THE EXISTING FOOTPRINT. NO INCREASE IN STORMWATER RUN-OFF WILL BE CREATED. FIRST FLOOR ADDITION TO HAVE SPREADERS ONTO LOWER ROOFS AND FLOW INTO STREET GUTTER VIA EXISTING STORMWATER CONNECTION.
SCHEDULE OF DOORS & WINDOWS
LEGEND
STUTCHBURY JAQUES PTY LTD
LAND SURVEYING CONSULTANTS
P.O. BOX 7249, BROOKVALE NSW 2100
PH: 8976 1600 FAX: 8976 1655 E-MAIL: info@stutchbury.net.au
REFERENCE 11106/21
REG'D SURVEYOR
DATE: 11/03/2021
SCALE: 1:100
DATUM: A.H.D.
SITE AREA: 682.8m²
SHEET 1 OF 1 SHEETS
CLIENT: YOUR STYLE
PROJECT: LEVEL & DETAIL SURVEY LOT 9 SEC. 5 D.P.12985 No.869 PITTWATER ROAD, COLLAROY.
LGA: NORTHERN BEACHES
869 PITTWATER ROAD, COLLAROY
Dimensions shall not be obtained by scaling off drawings. All dimensions shall be site checked prior to commencement of works. All measurements on plans are subject to change due to site variances, engineering requirements and Council conditions.
Project Name: Alterations & Additions
Drawing Title: SITE PLAN
Owner: ANTHONY & JANICE LUPTON
Address: 869 Pittwater Road, Collaroy 2097
Plot Date: Friday, 5 November 2021
Scale: 1:100
Drawing No.: 3

ELEVATIONS (NORTH & SOUTH)



3 SOUTH ELEVATION (FRONT ELEVATION)



4 NORTH ELEVATION (REAR ELEVATION)

869 PITTWATER ROAD, COLLAROY

Dimensions shall not be obtained by scaling off drawings. All dimensions shall be site checked prior to commencement of works. All measurements on plans are subject to change due to site variances, engineering requirements and Council conditions.

Project Name :
Alterations & Additions

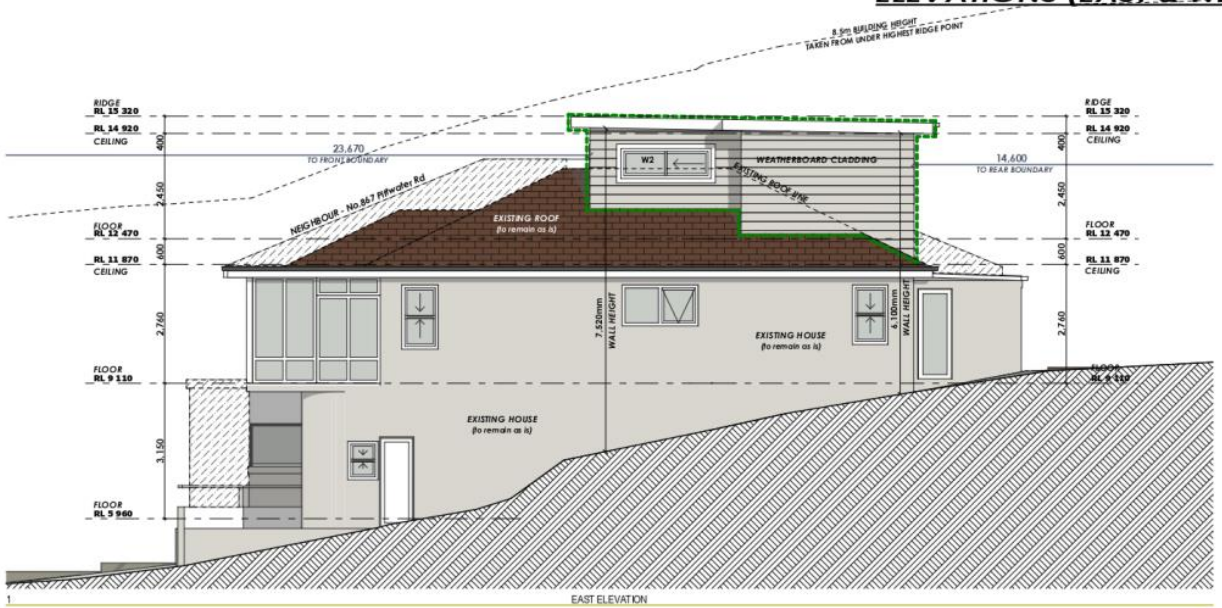
Drawing Title :
ELEVATIONS

Owner :
ANTHONY & JANICE LUPTON

Address :
869 Pittwater Road, Collaroy 2097

Plot Date : Friday, 5 November 2021
Scale : 1:100
Drawing No. : 10

ELEVATIONS (EAST & WEST)





869 PITTWATER ROAD, COLLAROY

Dimensions shall not be obtained by scaling off drawings. All dimensions shall be site checked prior to commencement of works. All measurements on plans are subject to change due to site variances, engineering requirements and Council conditions.

Project Name :
Alterations & Additions

Drawing Title :
ELEVATIONS

Owner :
ANTHONY & JANICE LUPTON

Address :
869 Pittwater Road, Collaroy 2097

Plot Date : Friday, 5 November 2021
Scale : 1:100
Drawing No. : 11

ITEM 3.6	**DA2021/1863 - 24 CAPUA PLACE AVALON BEACH - ALTERATIONS AND ADDITIONS TO A HOME OFFICE FOR USE AS A SECONDARY DWELLING**
REPORTING MANAGER	**RODNEY PIGGOTT**
TRIM FILE REF	**2021/835484**
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 PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2021/1863 for alterations and additions to a home office for use as a secondary dwelling on land at Lot 17 DP 219898, 24 Capua Place, Avalon Beach, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1863

Responsible Officer:	Nick England
Land to be developed (Address):	Lot 17 DP 219898, 24 Capua Place AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a home office for use as a secondary dwelling
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:	David Rex Crossley Corinne Elizabeth Marie Canter
Applicant:	Vaughan Milligan Development Consulting Pty Ltd

Application Lodged:	12/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/10/2021 to 11/11/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 11.3%
Recommendation:	Approval

Estimated Cost of Works:	$ 24,950.00

Executive Summary

The application consists of the conversion of an existing two-storey studio and garage to a secondary dwelling on the 1st floor.

Physical works consist of internal works to provide bathroom and kitchen. Other external works include a new roof and additional windows on the north-west and south-west elevations.

The application is referred to the Development Determination Panel (DDP) as the 1st floor of the structure which is to be occupied by the proposed secondary dwelling will exceed the Height of Buildings development standard that applies to such development, by more than 10%.

PROPOSED DEVELOPMENT IN DETAIL

The application consists of the following:

- conversion of an existing 1st floor home office, for a secondary dwelling, approximately 27m^2 in area;
- demolition of existing internal stairs and small deck on north elevation;
- construction of new external stairs and access deck on west elevation;
- new door and windows on south, west and east elevations; and
- new roof.

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 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C1.11 Secondary Dwellings and Rural Worker's Dwellings
Pittwater 21 Development Control Plan - D1.8 Front building line
Pittwater 21 Development Control Plan - D1.9 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 17 DP 219898 , 24 Capua Place AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Capua Place, Avalon. The site is irregular in shape with a frontage of 15.85m along

	Capua Place and variable depths of up to 52.5m. The site has a surveyed area of 1,215m². A right-of-carriageway for the properties at No.22 Capua and No.37 Riviera is located through the centre of the site, north of the existing principal dwelling. The site is located within the E4 Environmental Living zone and accommodates a two storey dwelling and detached two-storey garage and studio building. The site has a southerly aspect with a steep slope rising up from the Capua Place frontage. The site possesses vegetation and is located adjoining allotments that have significant remnants of Pittwater Spotted Gum ecological community. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwelling houses.

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:

N0354/08: Development consent granted for "A new home office addition to the existing detached garage" on 30 October 2008. This consent included the construction of an external set of stairs on the western elevation, to access the approved home office / studio on the 1st floor above the garage.

CC2008/3117: A construction certificate (CC) relating to N0354/08 is issued by Insight Building Certifiers on 10 December 2008. On the approved plans for the CC, the stairs to the 1st floor have been located internally. A site visit has confirmed that the external stairs on the west elevation have not been constructed.

PLM2021/0138: An application for written-only pre-lodgement advice was provided by Council on 29 June 2021. The applicant sought advice on whether the conversion of the home office on the 1st floor to a secondary dwelling was supported. Council advised that the proposal was supported, subject to a Clause 4.6 written request be provided, relating to the 5.5m height standard that applies to secondary dwellings.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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)	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. Clause 50(1A) 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. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. 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 28/10/2021 to 11/11/2021 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mrs Jennifer Mary Cullen	26 Capua Place AVALON BEACH NSW 2107

One (1) submission was received from an adjoining property during the notification period. The submission states that there is no overall objection to the proposed development. The issues raised in the submission have been summarized and are addressed below:

- *Council's Biodiversity Officer has correctly noted the biodiversity value of the subject land and adjoining properties, particularly on the upper areas of the site. The recommended conditions are important to enhance these values.*

  Comment: The conditions recommended by Biodiversity Officer are considered reasonable to apply and will be incorporated into the recommendations of this report.

- *The owners of No.26 and adjoining properties are working together to regenerate the natural vegetation community and seek advice from Council on the best course of action to do this.*

  Comment: The submittor has been advised to seek advice from Council's Bushland and Biodiversity team on how to undertake these regeneration works.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
NECC (Bushland and Biodiversity)	The application seeks approval for alterations and additions to an existing dwelling, including change of use of an existing home office to a secondary dwelling. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:

Internal Referral Body	Comments
	Biodiversity Conservation Act 2016 (BC Act) **Biodiversity Conservation Regulation 2017** **Pittwater Local Environmental Plan (PLEP)** • 7.6 Biodiversity Protection **Pittwater Development Control Plan (PDCP)** • B4.6 Wildlife Corridors The rear (northeast) of the site is located within the Department of Planning, Industry and Environment's (DPIE) Biodiversity Values Mapping. Any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS). The proposal involves the conversion of an existing home office into a secondary dwelling. As the proposal is located wholly within the existing footprint, and does not require the removal of prescribed trees or vegetation, nor is it likely to impact on soft open space or nearby biodiversity values, the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls and the BOS is not triggered.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Affordable Rental Housing) 2009

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

Division 2: Secondary dwellings

Clause 19: Definition

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

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

Note: The standard instrument defines secondary dwelling as follows:

"***secondary dwelling*** *means a self-contained dwelling that:*

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

Comment:

The proposed works and conversion of the existing 1st floor studio will be located on the same allotment as the principal dwelling and separate to this dwelling. In this respect, the proposed use is consistent with the definition of secondary dwelling contained within under PLEP 2013.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but *only if* development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	**Consistent.** The site is located within the E4 Environmental Conservation zone, which is equivalent to the zones specified in (a) and (b). As such, the proposed use is permissible with consent under PLEP 2013.

Clause 21: Development to which this Division applies

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

Clause 22: Development may be carried out with consent

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

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The proposal will only result in both a principle dwelling (detached from the garage) and secondary dwelling, located above the garage. The proposal is hence consistent with this requirement.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	The floor space of the proposed secondary dwelling is estimated at 26.8m2, which is consistent with this requirement.
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres. (b) parking if no additional parking is to be provided on the site.	The area of the subject land exceeds 450m^2. No formal parking space is set aside for the proposed secondary dwelling. The requirements of Council's off-street parking policies are discussed elsewhere in this report. In summary, despite no extra car space being provided, the refusal of the application is not recommended on these grounds. Hence, the application is consistent with this requirement.

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

Clause 24: No subdivision

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

Conclusion

Based on the assessment provided above, the development is consistent with the objectives and requirements of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A429731 dated 2 September 2021).

The BASIX Certificate indicates that the development will achieve the sustainability requirements of the SEPP.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	5.5m (secondary dwellings)	6.2m	11.3%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	No
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	5.5m
Proposed:	6.2m*
Percentage variation to requirement:	11.3%

*the written request provided with the application states that the maximum height will be 6.4m, however estimates made from the plans determine this is likely to be 6.2m

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 (2FA) - 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 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 proposed works utilize an existing building and the non-compliance with the Height of Buildings development standard relates to an existing approved structure;

- the bulk and scale of the proposed works will make no effective change to the existing built form character on Capua Place;
- there will be no site disturbance, excavation or vegetation loss; and
- no adverse amenity impact is likely to adjoining properties as a result of the non-compliance with the standard.

The reasons provided in the written request are considered to be valid and make pertinent justifications to demonstrate that under the circumstances it would be both unnecessary and unreasonable to strictly apply the development standard.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment: It has been stated previously that the proposed works / use are located within an existing structure and that the resulting bulk and scale will make no substantive change to the existing built form in Capua Place. Whilst this valid, it is worthwhile to consider the proposal in the context of being in effect a new structure and considering the impacts on the surrounding area in this manner.

The proposed variation is at its highest point 700m above the maximum standard and this only occurs on the south-eastern corner of the structure. In effect, the majority of the upper level of the structure will be consistent with the standard. In this regard, it is considered that the proposal is of a bulk and scale not so dissimilar to the new development that is expected under the current policies of Council.

Hence, the proposal can easily demonstrate that it is consistent with the objective of having a bulk and scale that is consistent with the desired future character of the locality.

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

Comment: Existing dwellings in the vicinity of the subject site are typically up to two stories in height. In this regard, the proposed works are of a compatible scale to surrounding and nearby development and the proposal is consistent with this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment: Based on the shadow diagrams provided with the application, there will be no adverse overshadowing on neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment: The proposed variation to the development standard is unlikely to result in any loss of any existing views enjoyed from adjoining properties.

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

Comment: The existing building's footprint will not be modified by the proposed works. The extension to the roof will only in part breach the height standard and in this context it is considered that the proposal responds adequately to the natural topography of the site.

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

Comment: The proposal will not cause any loss of vegetation or disruption to the existing biodiversity values of the land.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are considered below:

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

  Comment: The extent of the proposed works and additions to the existing building are relatively minor and easily fit into the category of low-impact residential development, as described by this objective.

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

Comment: As stated above, the proposed works are low-impact and will be consistent with the ecological values of the subject land and the zone.

- *To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.*

  Comment: This objective is not relevant to the proposal.

- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*

  Comment: The proposed works make minor modifications to an existing, small-scale structure that has already been designed to integrate with the natural character of the area. The proposal is hence consistent with this objective.

- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

  Comment: No remnant bushland, rock outcrops or indigenous tree canopy will be effected by the proposed development.

Conclusion:

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

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

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

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 building Development Standard associated with a single dwelling house / secondary dwelling (Class 1 building).

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	1.7m (from eaves of new roof) 3m (secondary dwelling within existing structure)	73% N/A	NO N/A
Rear building line	6.5m	24m	N/A	Yes

Side building line	2.5m (east)	8.8m	N/A	Yes
	1m (west)	0.2m (external stairs) 1.3m (secondary dwelling within existing structure)	80% N/A	NO N/A
Building envelope	3.5m	Within envelope (east)	N/A	Yes
	3.5m	Within envelope (west)	N/A	Yes
Landscaped area	50%	799m^2 or 62%	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	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
C1.11 Secondary Dwellings and Rural Worker's Dwellings	No	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

Description of Non-Compliance

The DCP requires that for secondary dwellings:

For a Secondary Dwelling a minimum of 1 space is required in addition to existing requirement for the principal dwelling (based on number of bedrooms in principal dwelling)

Based on the 1 bedroom dwelling provided, at least 1 off-street car space would be required. The site only provides 1 formal car space for the existing principal dwelling, as per the most recent approval on the land.

The application provides no car space for the proposed secondary dwelling, with the Statement of Environmental Effects suggesting that additional car spaces could be provided on the right-of-carriageway to the rear of the existing principle dwelling.

Consideration of the Outcomes of the Control

An adequate number of parking and service spaces that meets the demands generated by the development.

Comment: The proposed secondary dwelling is in effect a studio, that will generate minimal demand for parking, in contrast with a dwelling that has multiple bedrooms. Realistically any parking demand from the proposed dwelling will have to be accommodated on the road reserve on Capua Place. An examination of Capua Place demonstrates that this is a cul-de-sac with low volumes of traffic and an adequate carriageway width. Observation does not currently indicate that there is any shortfall in public parking spaces on this road that would be worsened by the accommodation of one additional car space on the road reserve. Hence, this Outcome could be achieved.

Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.

Comment: There are no reasonable areas on the site that could accommodate 1 extra car space: the existing garage has dimensions for 1 space only; the driveway leading to the garage has a grade that could not accommodate a car space consistent with the Australian Standards; and the right-of-carriageway could not be reasonably relied upon to provide both vehicular access and parking. Hence, it would not be reasonable to apply a condition to provide 1 additional car space on the site.

Safe and convenient parking.

Comment: As stated above, there is limited opportunity to provide additional car parking on the site, which would meet the relevant standards for safe and convenient access.

C1.11 Secondary Dwellings and Rural Worker's Dwellings

Description of Non-Compliance

The proposed secondary dwelling is located on the 1st floor of the existing building, which in effect is not consistent with the Control that states:

A secondary dwelling above a detached garage is not supported.

Consideration of the Outcomes of the Control

Limitation of the visual bulk and scale of development. (En, S)

Comment: As the proposed secondary dwelling is located within an existing building, this Outcome will not be compromised.

Provision of design flexibility for second storey development.

Comment: This outcome will not be compromised by the proposed conversion of the existing home office to a secondary dwelling.

Restriction of the footprint of development site. (En)

Comment: The footprint of the existing building will not be changed by the proposed works, hence this Outcome is achieved.

Retention of natural vegetation and facilitation planting of additional landscaping. (En)

Comment: There will be no loss in the existing level of landscaped open space on the site, as a result of the proposed works.

Provision of rental accommodation. (S)

Comment: Opportunities for additional rental accommodation in the surrounding area will be improved by the proposed conversion of the existing home office.

In conclusion, the proposed secondary dwelling will achieve the Outcomes of the control and the primary justification for not meeting the Control is that the dwelling will be located within an existing building. Refusal of the application based on the non-compliance with this control, would not be reasonable under the circumstances.

D1.8 Front building line

Description of Non-Compliance

The new roof for the garage / secondary dwelling building is located 1.7m from the front boundary. This represents a 73% variation with the minimum front building line control (6.5m)

Consideration of the Outcomes of the Control

To achieve the desired future character of the Locality. (S)

Comment: The proposed roof will relate to an existing two-storey structure that has existed on the site for since the late 2000's. In this regard, even though the roof represents a numerical non-compliance, in effect it will not change the existing character of the built form in Capua Place. Hence this Outcome is achieved.

The amenity of residential development adjoining a main road is maintained. (S)

Comment: This Outcome is not applicable to the subject site.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment: No vegetation will be lost as a result of the replacement of the existing roof. Hence, this Outcome is achieved.

Vehicle manoeuvring in a forward direction is facilitated. (S)

Comment: As the building footprint will remain largely unchanged, this is not relevant to the proposal.

To encourage attractive street frontages and improve pedestrian amenity.

Comment: The presentation of the existing structure will remain largely unchanged as a result of the proposed new roof and no changes are proposed at ground level to the existing pedestrian access. Hence, this Outcome is achieved.

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

Comment: As stated previously, the proposed roof relates to an existing approved structure that is already in close proximity to the front setback. The topography of the site rises up sharply from the carriageway of the Capua Place, which lessens the visual prominence of both the existing structure and the new roof that is proposed upon it. Under these circumstances, this Outcome will be achieved, despite the non-compliance with the front building line control.

In summary, the proposed development can achieve compliance with the Outcomes of the control, and approval is recommended despite the non-compliance with the numerical control.

D1.9 Side and rear building line

Description of Non-Compliance

The proposed external stairs are located between 0.2 to 1.7m from the western side boundary. This in part represents a 80% variation with the 1m minimum side setback.

Consideration of the Outcomes of the Control

To achieve the desired future character of the Locality. (S)

Comment: The proposed stairs are of a transparent construction and only a small part of the stairs and the associated entry deck are within the 1m setback. The works adjoin a front setback and road reserve that is reasonably vegetated, which will mitigate the visual prominence of these stairs. Hence, this Outcome is achieved.

The bulk and scale of the built form is minimised. (En, S)

Comment: As stated previously, the works on the western elevation will be lightweight and transparent in nature, minimizing the visual impact when viewed from adjoining properties and the public domain. Hence, this Outcome is achieved.

Equitable preservation of views and vistas to and/or from public/private places. (S)

Comment: It is unlikely that the non-compliance will result in the loss of any significant views that are enjoyed by surrounding properties.

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

Comment: As stated above, it is unlikely that the non-compliance will result in the loss of any significant views that are enjoyed by surrounding properties.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Comment: The proposed stairs and deck will not closely overlook into any habitable rooms or sensitive areas of private open space on the adjoining property to the west. Hence, this Outcome is achieved.

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

Comment: No significant vegetation will be removed as a result of the proposed stairs, therefore this Outcome is not compromised.

Flexibility in the siting of buildings and access. (En, S)

Comment: Only a small part of the stairs and deck will encroach the side setback and the breach is required to provide safe and convenient access to the 1st floor secondary dwelling. This Outcome is achieved.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment: As no vegetation is proposed to be removed, this Outcome is not relevant to the proposal.

A landscaped buffer between commercial and residential zones is achieved.(En,S)

Comment: This Outcome is not relevant to the subject land.

In summary, the non-compliance with the side setback control will not compromise the Outcomes of the control and strict compliance with the control is not considered necessary under the circumstances.

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

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

Examination of Council's records and a site inspection has revealed two (2) matters that relate to un-authorised works on the subject land. These are discussed below:

1. Access Stairs: In the original consent for the garage / home office, an external access stair was proposed on the side west elevation of the building. However Council's records demonstrate that the CC plans issued by the certifier have re-located these stairs internally. No modification for the original consent was sought. Site visits have confirmed that the external was not built. In effect, the subject application seeks to gain consent again for the external stairs and remove the existing internal stairs. This matter can be rectified through the current application.

2. Ground floor deck adjoining garage: A deck is currently located on the ground floor of the garage on the southern front elevation, approximately 1.7m from the front boundary at it's closest point. This deck was not part of the original development consent for the garage / home office and no other records demonstrate that this was erected with consent. A deck forward of the existing front building line would normally require development consent. As retrospective development consent cannot be granted, a condition of consent is recommended that this deck not form part of this development consent.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant’s written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 (2FA) 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.

In summary, a detailed assessment has been required for the following specific issues:

- A greater than 10% variation to the Height of Buildings development standard, as it relates to secondary dwellings;
- Secondary dwelling controls for building over garages, as it relates to P21 DCP;
- Front and side building line controls under P21 DCP; and
- Parking requirements for secondary dwellings under P21 DCP.

In regard to the development standard variation and associated built form controls non-compliances, as these relate to the conversion of an existing approved dwelling, the non-compliances can be supported and are not considered to be reasonable cause to refuse the application.

In regard to car parking, the provision of one (1) additional car space is not considered necessary and the surrounding road network will not be adversely compromised by the accommodation of the one space on the adjoining road reserve.

It is therefore recommended to DDP that the application be approved, subject to the recommended conditions.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2021/1863 for Alterations and additions to a home office for use as a secondary dwelling on land at Lot 17 DP 219898, 24 Capua Place, AVALON BEACH, 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**

DA3	26 August 2021	Northern Beaches Design
DA4	26 August 2021	Northern Beaches Design
DA5	26 August 2021	Northern Beaches Design
DA6	26 August 2021	Northern Beaches Design
DA7	26 August 2021	Northern Beaches Design
DA8	26 August 2021	Northern Beaches Design
DA11	26 August 2021	Northern Beaches Design

Reports / Documentation – All recommendations and requirements contained within:		
Report Title / No.	**Dated**	**Prepared By**
BASIX Certificate A429731	2 September 2021	Evergreen Energy Consultants
Geotechnical Report	16 September 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:

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
-	16 September 2021	Vaughan Milligan Development Consulting

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. **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 secondary dwelling.

A secondary dwelling is defined as:
"a self-contained dwelling that:

(a) is established in conjunction with another dwelling (the principal dwelling), and
(b) is on the same lot of land as the principal dwelling, and

(c) is located within, or is attached to, or is separate from, the principal dwelling"
(development is defined by the Pittwater Local Environment Plan 2013 (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.

3. **No Approval for Land Use**
No approval is granted under this Development Consent for the existing ground floor deck adjoining the south-west elevation of the garage, noted as "deck" on Plan No.DA04.

Reason: To ensure retrospective consent is not granted to existing works which do not have 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.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

6. **Security Bond**

A bond (determined from cost of works) of $1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. **No Clearing of Vegetation**
Unless otherwise exempt, 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.

8. **Secondary Dwelling above a 'non-appurtenant private garage**
Where building works involve a Class 1a Secondary Dwelling above a non-appurtenant private garage, fire separation works are to be carried out in accordance with Part 3.7.4 of the Building Code of Australia –'Fire separation of garage top dwellings' and NSW 1.1 Additions.
Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: To ensure adequate provision is made for fire safety and for building occupant safety

9. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

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

11. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

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

Reason: To protect wildlife habitat.

12. **New Vegetation Planting**
Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the

relevant section of the Native Gardening Booklet available on Council's website.

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

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

13. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) 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.

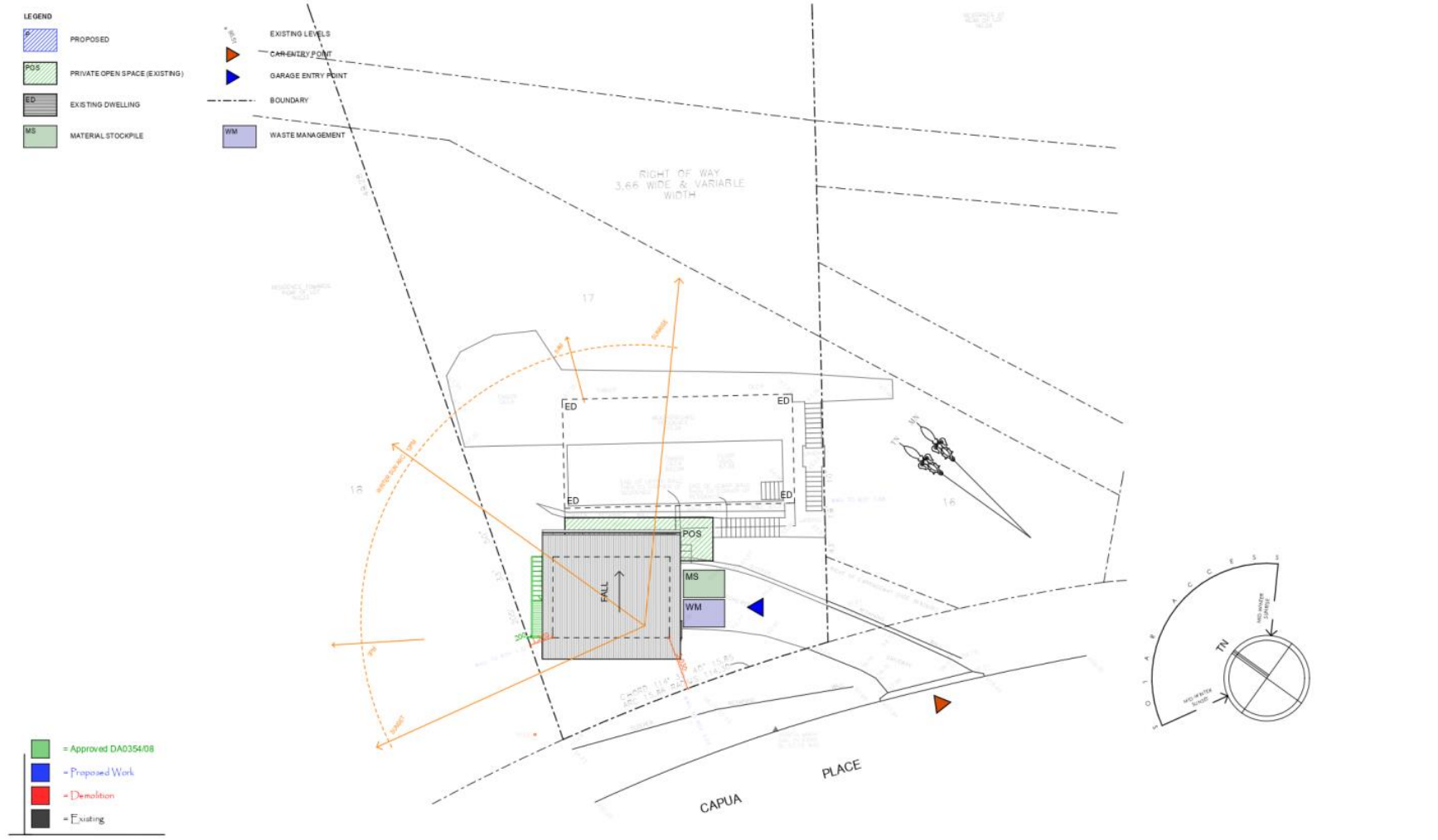
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

14. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

15. **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.



The builder shall check and verify all dimensions and verify all errors and omissions to the Designer. Do not scale from the drawings. Drawings shall not be used for construction purposes until issued by the Designer for construction. Drawings and design is subject to copyright and may not be reproduced without prior written consent by Northern Beaches Designs.

Date : Issue : Description :

bdaa ACCREDITED BUILDING DESIGNER

Northern beaches designs
Postal address: P O Box 870, Narrabeen NSW 2101
Office: 28 Cook Terrace, Mona Vale
M 0432 125 244, Member no. BDA 2479-18

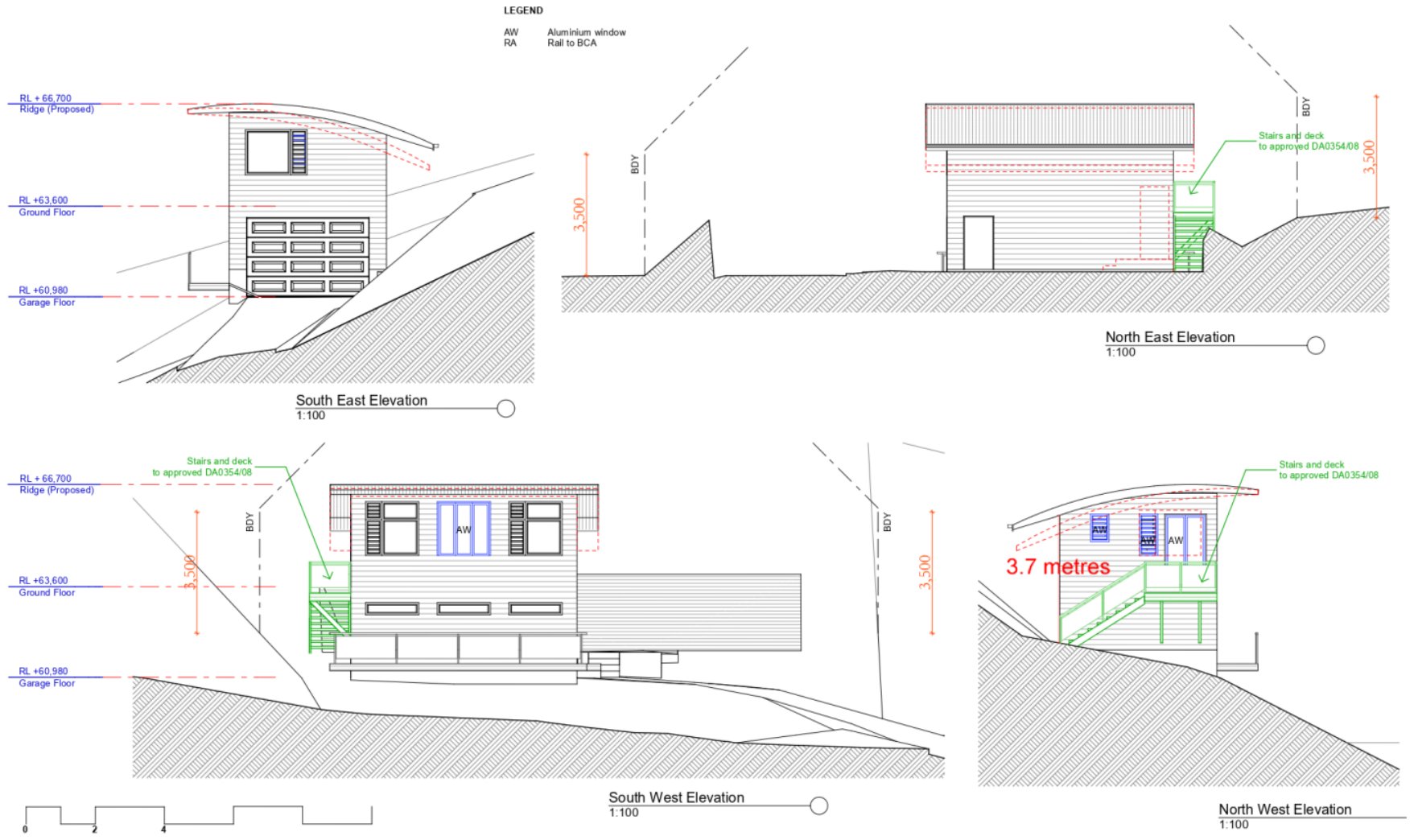
Project : Additions & Alterations
DA
24 Capua Place, Avalon
Lot 17 in DP 219818 - 1215m2

Client : Private Residence

Drawing : - Site Analysis Plan & Waste Mngmnt Plan

Drawn/Designed : PB/MW
Project Number : 2133
Drawing No. : DA3

Date : 260821
Scale : 1:200 @ A3
Issue :



Date :	Issue :	Description :

The builder shall check and verify all dimensions and verify all errors and omissions to the Designer. Do not scale from the drawings. Drawings shall not be used for construction purposes until issued by the Designer for construction. Drawings and design is subject to copyright and may not be reproduced without prior written consent by Northern Beaches Designs.

bdaa ACCREDITED BUILDING DESIGNER

Northern beaches designs
Postal address: P O Box 870, Narrabeen NSW 2101
Office: 28 Cook Terrace, Mona Vale
M 0432 125 244, Member no. BDA 2479-18

Project : Additions & Alterations
DA
24 Capua Place, Avalon
Lot 17 in DP 219818 - 1215m2
Client : Private Residence
Drawing : - Elevations

= Approved DA0354/08
= Proposed Work
= Demolition
= Existing

Drawn/Designed : PB/MW
Project Number : 2133
Drawing No. : DA7

Date : 260821
Scale : 1:100 @ A3
Issue :

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

24 CAPUA PLACE, AVALON BEACH

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT CONTROL AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS, INCLUDING CHANGE OF USE OF AN EXISTING HOME OFFICE TO A SECONDARY DWELLING

For:	For proposed construction of alterations and additions, including change of use of an existing home office to a secondary dwelling
At:	24 Capua Place, Avalon Beach
Owner:	David Crossley
Applicant:	David Crossley C/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3(2FA) of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Pittwater LEP 2014 – Clause 4.3(2FA) prescribes a maximum building height for secondary dwellings within the E4 Environmental Living zone for the subject site of 5.5m. This control is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed works will provide a height of 6.4m above natural ground level which exceeds Council's maximum building height by 0.9m or 16.36% and therefore does not comply with this control.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is clause 4.3 of PLEP 2014 a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act mean standards fixed in respect of an aspect of the development and includes:

"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,."

(b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

Clause 4.6(1) of PLEP provides:

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in ***RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [1], [4] & [51]*** where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.
Clause 4.6(2) of the LEP provides:

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

Clause 4.3 (the Maximum Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of PLEP provides:

(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.

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of PLEP which specifies a maximum building height of 5.5m for secondary dwellings within the E4 Environmental Living zone. The development will result in a maximum building height of 6.4m or exceed the height control by 0.9m or 16.36%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

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

(a) the consent authority is satisfied that:

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

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest

because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

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

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to provide for a secondary dwelling, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

- *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 provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

The proposal will provide for the construction of alterations and additions, including change of use of an existing home office to a secondary dwelling to provide for increased amenity for the site's occupants.

The non-compliance with the height control arises as a result of the existing levels created by the existing garage and home office.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed new works will not see any unreasonable impacts on the views enjoyed by neighbouring properties, nor will the works see any unreasonable impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Capua Place and the wider public view of the site, together with from the surrounding private properties, will be largely maintained.

5.0 The Nature and Extent of the Variation

5.1 This request seeks a variation to the maximum building height standard contained in clause 4.3 of PLEP.

5.2 Clause 4.3(2FA) of PLEP specifies a maximum building height of 5.5m in the E4 Environmental Living zone.

5.3 The proposed additions and alterations will have a maximum height of 6.4m, which exceeds the height control by 0.9m or 16.36%.

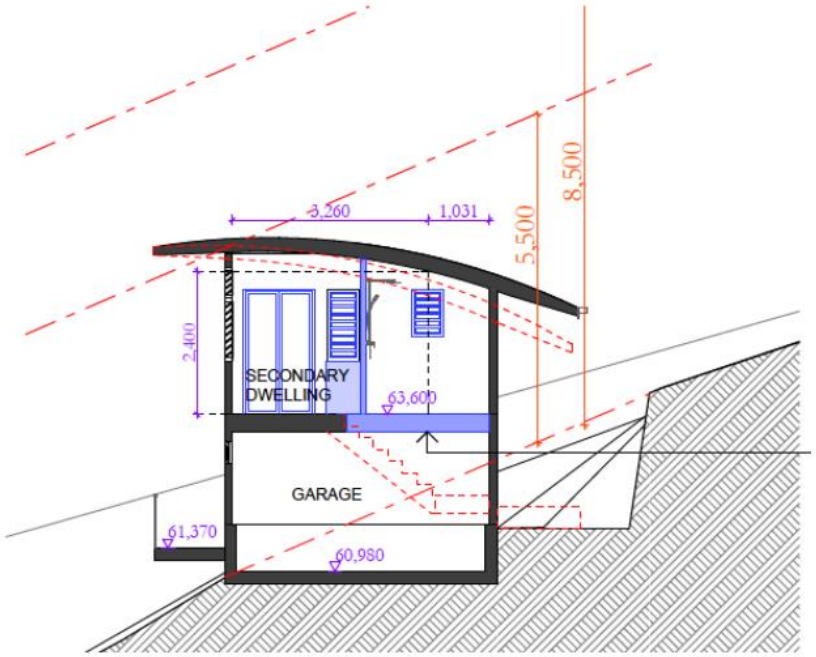


Fig 3: View of area breaching maximum building height control as noted in Section B-B prepared by Northern Beaches Designs

6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
>
> *18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
>
> *19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
>
> *20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
>
> *21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
>
> *22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of PLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the E4 zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of PLEP?

7.0. Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

(a) This request relies upon the 1st way identified by Preston CJ in Wehbe.

(b) The first way in Wehbe is to establish that the objectives of the standard are achieved.

(c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by one and two storey development.

The proposal seeks to accommodate the additions within a compatible building form, with the slope of the site and siting of existing development resulting in a portion of the roof being up to 6.4m in height.

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

The proposed height of the dwelling maintains consistency with the siting of surrounding development. The proposed development that is consistent and sympathetic with the existing development and wider site. The proposed development is considered to be compatible with the bulk and scale of surrounding development.

(c) to minimise any overshadowing of neighbouring properties,

The proposal is accompanied by Shadow Diagrams (Drawing No. DA12 – DA14) which demonstrate that the proposal will see any unreasonable diminution of the existing solar access currently received by neighbouring properties.

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

Due the location of the site which slopes away from the street, the proposal is not considered to result in any unreasonable view impacts on uphill properties. The existing front and rear setbacks are not altered, which will ensure that the neighbouring properties will maintain their views.

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

The proposal will continue to present as a consistent and modest two storey development to Capua Placed.

The external form of the built form does not alter the existing building envelope and continues to be sympathetic to the sloping topography of the site, and the development is considered to be effectively integrated into the landform.

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

The proposal provides for the construction of alterations and additions to provide for a secondary dwelling in a manner which will retain the residential dwelling character of the site and the immediate area.

The proposal will maintain the modest two storey scale to Capua Place.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Pittwater area.

This objective is achieved in that the proposal will not require any substantial site disturbance or excavation.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed additions will maintain the general bulk and scale of the existing surrounding newer dwellings and maintain architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the streetscape of Capua Place which also promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed new development is considered to promote a consistent design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).

- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E4 Environmental Living Zone?

(a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.

(b) Each of the objectives of the E4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone".*

In response to *Nessdee,* I have provided the following review of the zone objectives:

It is considered that notwithstanding the modest breach of the maximum building height by 0.9m, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environmental Living Zone for the following reasons:

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

  As found in Nessdee, this objective is considered to establish the principal values to be considered in the zone.

  Secondary dwellings are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

  The E4 Environmental Living contemplates low density residential uses on the land.

  The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to provide for a new secondary dwelling which will provide for an appropriate level of amenity and in a form which will respect the predominant bulk and scale of the surrounding dwellings.

  The proposed new works are carried out in a manner which will retain the single dwelling character of the site and the immediate area.

  The proposal will continue to present as a modest two storey development to Capua Place, in keeping with the extent of existing development.

  The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Pittwater area.

  The compatible form and scale of the proposed development will meet the housing needs of the community within a secondary dwelling which is a permissible use in this environmentally sensitive zone.

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

  This control is not relevant to the subject residential development.

- **To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.**

  This control is not relevant to the subject residential development.

  Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

7.5 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of PLEP?

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

(b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

(c) there are no other matters required to be taken into account by the secretary before granting concurrence.

7.0 Conclusion

This development proposes a departure from the maximum building height control, with the development to provide for a height of up to 6.4m.

This variation occurs as a result of the sloping topography of the site and siting of existing development.

This objection to the maximum building height control specified in Clause 4.3 (2FA)of the Pittwater LEP 2014 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of PLEP 2014 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.

Vaughan Milligan

VAUGHAN MILLIGAN
Town Planner

ITEM 3.7	**REV2021/0035 - 114 WHALE BEACH ROAD WHALE BEACH - REVIEW OF DETERMINATION OF APPLICATION DA2020/1186 FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**TONY COLLIER**
TRIM FILE REF	**2021/835830**
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 REV2021/0035 for Review of Determination of Application DA2020/1186 for alterations and additions to a dwelling house on land at Lot 82 DP 10782, 114 Whale Beach Road, Whale Beach, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0035

Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 82 DP 10782, 114 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Review of Determination of Application DA2020/1186 for alterations and additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Fiona Leigh Champion
Applicant:	Space Landscape Designs Pty Ltd

Application Lodged:	08/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	20/09/2021 to 04/10/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 46,870.00

EXECUTIVE SUMMARY

This application is a Review of Determination of a previous application DA2020/1186 that was refused under delegation on 10 December 2020. The proposal is for alterations and additions to a dwelling house.

This review of determination is accompanied by amended plans which have reduced the number of trees to be removed and have terraced the retaining walls to minimise the impact on existing vegetation in response to the reasons for refusal.The amended plans and documentation submitted with this Review of Determination have been considered against the reasons for refusal of DA2020/1186 later within this assessment report. It is concluded that the reasons for refusal have been adequately addressed by amended plans and the proposal has demonstrated compliance with the relevant controls

within the Pittwater DCP which were raised as reasons for refusal of DA2020/1186.

The application was notified for a period of 14 days no submission were received.

Overall, the proposed development is considered to meet the key development controls of the Pittwater DCP and Pittwater LEP. The plans have been amended in a satisfactory way to respond to the reasons for refusal of DA2020/1186. Therefore, the proposed development is recommended for approval to the Development Determination Panel subject to the conditions outlined within this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks a review of the refusal of DA2020/1186, for alterations and additions to a dwelling house. The original development application sought development consent for the following:

- Demolition of existing stone retaining wall at the front of the site (and partially within the road reserve).
- New block retaining walls at the front of the site (and partially within the road reserve).
- Widen a section of the existing driveway.
- Remove four (4) trees.

Amended plans have been submitted with the following works proposed:

- Demolition of existing stone retaining wall at the front of the site (and partially within the road reserve).
- Construction of two new concrete block retaining walls to create a tiered garden (and partially within the road reserve).
- Widen a section of the existing driveway.
- Removal of one tree and a replacement tree proposed from the same species from Pittwater Spotted Gum EEC.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
Pittwater Local Environmental Plan 2014 - Zone E4 Environmental Living
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 82 DP 10782 , 114 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	The subject site consists of one allotment located on the south-western side of Whale Beach Road, Whale Beach. The site is regular in shape with frontage of 20.115m along Whale Beach Road and respective depths of 67.055m and 69.83m along the north-western and south-eastern side boundaries. The site has a surveyed area of 1362m^2. The site is located within the E4 Environmental Living zone and accommodates a part-2 part-3 storey dwelling house, including a swimming pool located forward of the front building line. The site is located along a ridge line and slopes away from the dwelling towards the road frontage and rear boundary. The rear yard comprises numerous canopy trees, whilst the site frontage and road reserve accommodate canopy trees and a retaining wall. The site is identified within a geotechnical landslip area and is mapped as containing tree species representative of the Pittwater Spotted Gum Forest endangered ecological community. **Detailed Description of Adjoining and Surrounding Development** Adjoining and surrounding development comprises low density residential development within a landscape setting. **Site Inspection** A site inspection was conducted 4 November 2021.

Map:



SITE HISTORY

The Development Application (DA2020/1186) was lodged with Council on 29 September 2020. The application sought approval for Alterations and additions to a dwelling house.

The application was assessed and determined by way of refusal under delegation for the following reasons:

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 Pittwater Local Environmental Plan 2014.*

2. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the E4 Environmental Living zone of the Pittwater Local Environmental Plan 2014.*

3. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.*

4. *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 A4.12 Palm Beach Locality of the Pittwater 21 Development Control Plan.*

5. *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 B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community of the Pittwater 21 Development Control Plan.*

6. *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 B4.22 Preservation of Trees and Bushland Vegetation of the Pittwater 21 Development Control Plan.*

7. *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 C1.1 Landscaping of the Pittwater 21 Development Control Plan.*

8. *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 D12.14 Scenic Protection Category One Areas of the Pittwater 21 Development Control Plan.*

The Notice of Determination was issued to the applicant on 10 December 2020.

On 8 September 2021, the applicant lodged the current application pursuant to Section 8.2 of the Environmental Planning and Assessment Act 1979 (the Act) for the review of Council's determination of refusal for DA202.0/1186.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 10 December 2020 and the notice of determination was issued on 15 December 2021. The review was lodged on 26 August 2021 and is to be considered by Delegation on 10 December 2021, which is within 12 months of the date of determination.

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

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

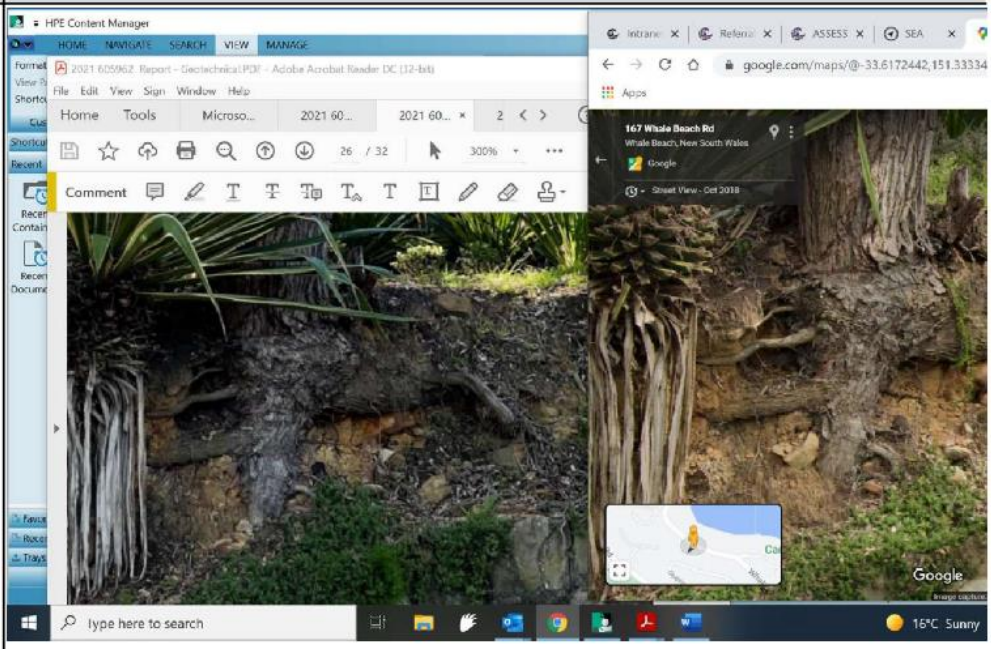
NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/09/2021 to 04/10/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal seeks approval to demolish an existing stone retaining wall in poor conditio located on the road reserve; construct two new concrete block retaining walls to create a and widen a section of the shared driveway. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (Environmental Living Zone, and the following Pittwater 21 DCP Controls (but not limited t • B4.22 Preservation of Trees and Bushland Vegetation. • C1.1 Landscaping. • D12 Palm Beach Locality, and specifically D12.10 Landscaped Area - Environme Sensitive Land. The proposal as submitted requires removal of a mature *Angophora floribunda* located w reserve. The existing driveway entrance off Whale Beach Road is relatively tight and narrow. The Environmental Effects indicates that the existing drive configuration requires three point t with modern vehicles. It is noted that the drive is shared access between two residences. The proposed works provide for a widened section of the driveway at the entrance to Wh Road. The widening is located on the eastern side of the existing drive. It is noted that wi western side is not practicable due to steepness of existing levels. A retaining wall is required to be constructed on the eastern side to replace an existing fa against the existing embankment. The *A. floribunda* is located on the edge of the existing embankment. The tree has been located on top of the embankment and though some structural roots a appears to have been in this condition for some time and appears stable at present. Below is a comparison of the exposed roots as currently exists on the left side photo (So Geotechnical Report dated 1 April 2021 prepared by AssetGeoEnviro) with street view im 2018. (Source Google Maps, 2018).

Internal Referral Body	Comments
	 However, following review of the submitted information and noting the comments of Cour section, expansion of the driveway at the entrance to Whale Beach Road is required to ir accessibility and safety of the access drive to and from the public road. The Arborist's Report indicates that the driveway widening and retaining wall constructior able to achieved without removal of the tree as it will be within the footprint of the works. As the removal of the tree is ultimately required to provide a functional and safe driveway affected properties and as there is no alternative to this outcome, in this instance no obje raised to removal subject to replacement and planting as indicated on the landscape plar It is noted that Council's Bushland and Biodiversity section have provided conditions rela replanting which are concurred with. Additional landscape conditions have been recomm regarding tree removal and protection.
NECC (Bushland and Biodiversity)	The review application relates to the refused development application under DA2020/118 demolition of the existing stone retaining wall and the construction of two new concrete b walls to create a tiered garden; and widen a section of the shared driveway. The applicant has responded adequately to the comments in the original Biodiversity con for DA2020/1186, and has subsequently reduced impacts to biodiversity as part of the re The proposed development now requires only the removal of Tree 1 (*Angophora floribun* of this native, prescribed tree will be mitigated through replacement planting of one (1) *Ai floribunda* within the site which has been identified within the amended Landscape plan a compliance with PDCP Clause B4.7, "*development shall result in no net loss in native ca*. The Landscape Plan (Space Landscape Designs, August 2021) has also been amended compliance with PDCP Clause B4.7, and species selected for landscaping are largely rep

Internal Referral Body	Comments
	the Pittwater Spotted Gum Forest EEC species assemblage. Based on the comments above, the Biodiversity referrals team raise no objections due to biodiversity impacts and subsequent compliance with relevant biodiversity planning contr
NECC (Coast and Catchments)	The application seeks review of the refused development application DA2020/1186 for de existing stone retaining wall, construction of two new concrete block retaining walls to cre garden and widening of a section of the shared driveway. The application has been asse consideration of the Coastal Management Act 2016, State Environmental Planning Policy Management) 2018 and has also been assessed against the requirements of Pittwater LI Pittwater 21 DCP. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore the C Management Act 2016 is applicable to the proposed development. The proposed develo consistent with the objects, as set out under Clause 3 of the Coastal Management Act 20 **State Environmental Planning Policy (Coastal Management) 2018** The subject land has been included on the 'Coastal Use Area' map under State Environm Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses14 and 15 of th apply for this DA. On internal assessment and as assessed in the submitted Statement of Environmental E report prepared by Space Landscape Designs Pty. Ltd. (27 August 2020), the DA satisfie requirements under clauses14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the St Environmental Planning Policy (Coastal Management) 2018 subject to conditions. **Pittwater LEP 2014 and Pittwater 21 DCP** No other coastal related issues identified and as such it is considered that the application with the coastal relevant requirements of Pittwater LEP 2014 and Pittwater 21 DCP.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to conditions of con
Road Reserve	There is no impact on existing road infrastructure assets. The driveway widening and associated retaining walls to be conditioned by Development as part of a s138 Road Act Application with appropriate engineering design details. The retaining wall to be located clear of the public road reserve and within the property bound
Traffic Engineer	The proposal is for widening of the existing driveway to improve access, particularly for la passenger vehicles and involves demolition of an existing stone retaining wall, Construct concrete block retaining walls with a section of the wall located on council's road reserve. be removed but the applicant proposes to replace it with another As the proposal will result in improved access to the driveway reducing the need for 3 po consequent delays and or hazards to other motorists, Council's Traffic Team raises no ob application.

Internal Referral Body	Comments
	Council's Assets team will need to comment upon the retaining wall on Council's Land, w development engineers will need to comment upon the driveway profile

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

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

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

supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

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

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 works are visually and physically separated from the foreshore and will not impact upon access to and along the foreshore; result in overshadowing, wind funnelling or view loss towards the foreshore; detract from the visual amenity of the coastal area; impact upon Aboriginal cultural heritage, places or practices; or impact upon cultural and built environmental heritage.

Based on the above, Council can be satisfied that the development is designed, sited and will be managed to avoid an adverse impact upon the above matters.

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

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

Comment:

The development is not likely to cause increased risk of coastal hazards on the site or adjoining lands.

Concluding Remarks
Based on the above assessment, it is concluded that the proposal demonstrates consistency with the relevant provisions within the CM SEPP.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	1.6m	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone E4 Environmental Living

The assessment of DA2020/1186 found that the proposed development was inconsistent with the Objectives of E4 Environmental Living zone and formed a reason for the refusal.

The amended applicant is required to consider the objectives of the E4 Environmental Living zone. An assessment against the zone objectives is carried out below:

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values***
- ***To ensure that residential development does not have an adverse effect on those values.***
- ***To provide for residential development of a low density and scale integrated with the***

landform and landscape.

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

Comment:
The proposal has been amended to only require one tree to be removed from the site. The loss of this native, prescribed tree will be mitigated through replacement planting of one (1) Angophora floribunda within the site. The Landscape Plan (Space Landscape Designs, August 2021) has also been amended to ensure compliance with PDCP Clause B4.7, and species selected for landscaping are largely representative of the Pittwater Spotted Gum Forest EEC species assemblage.

The proposed works are consistent with the objectives of the E4 Environmental Living zone. The development will continue to have the appearance of a "low impact" residential dwelling house in a natural landscaped setting, integrated with the scenic landform and aesthetic values. The site is physically and visually separated from the foreshore and the proposal does not result in the removal of riparian and foreshore vegetation.

Overall, the proposal is consistent with the desired objectives and future character of the E4 Environmental Living zone.

7.6 Biodiversity protection

The site is identified within the 'Biodiversity Area' pursuant to the PLEP 2014. The assessment of DA2020/1186 could not be support due to issues raised with the following provisions of the clause and are addressed below in response to the amended proposal:

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

(a) whether the development is likely to have:
(i) any adverse impact on the condition, ecological value and significance of the faun
(ii) any adverse impact on the importance of the vegetation on the land to the habitat
(iii) any potential to fragment, disturb or diminish the biodiversity structure, function a
(iv) any adverse impact on the habitat elements providing connectivity on the land, a
(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the devel

Comment:
The development has been assessed by Council's Biodiversity Team, who has reviewed the proposal and noted as follows:

"The applicant has responded adequately to the comments in the original Biodiversity comments for DA2020/1186, and has subsequently reduced impacts to biodiversity as part of the review request.

The proposed development now requires only the removal of Tree 1 (Angophora floribunda). The loss of this native, prescribed tree will be mitigated through replacement planting of one (1) Angophora floribunda within the site which has been identified within the amended Landscape plan and ensures compliance with PDCP Clause B4.7, "development shall result in no net loss in native canopy trees". The Landscape Plan (Space Landscape Designs, August 2021) has also been amended to ensure compliance with PDCP Clause B4.7, and species selected for landscaping are largely representative of the Pittwater Spotted Gum Forest EEC species assemblage.

Based on the comments above, the Biodiversity referrals team raise no objections due to the reduced biodiversity impacts and subsequent compliance with relevant biodiversity planning controls".

(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the development is designed, sited and will be managed to avoid any significant adverse ei
(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the develop
(c) if that impact cannot be minimised - the development will be managed to mitigate that impa

Comment:
As noted above, Council is satisfied that the development is designed, sited and can be managed to minimise adverse impacts on the existing trees. The proposal is consistent with this requirement.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Front building line	6.5m	Unaltered	Yes
Rear building line	6.5m	Unaltered	Yes
Side building line	2.5m - NW	Unaltered	Yes
	1m - SW	Unaltered	Yes
Building envelope	3.5m - NW	Within envelope	Yes
	3.5m - SW	Within envelope	Yes
Landscaped area	60% (817.2m^2)	62.89% (856.6m^2)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

DA2020/1186 did not comply with the following section of the Palm Beach Locality Statement:

"A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors".

Comment
The proposal has been amended to only require the removal of one tree from the site. Along with the replacement tree planting the proposal will maintain the natural landform and tree canopy. The amended design will provide a functional and safe driveway access to the site and adjoining property. It is considered that the proposal achieves the overall intention of the desired future character statement.

B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

Please refer to the comments prepared by Council's Landscape Officer and Biodiversity Officer for further information related to the tree removal.

In summary, subject to compliance with recommended conditions adherence with the landscape plan and replacement tree planting the application is seen to meet the outcomes of this clause and is supported on merit.

B4.22 Preservation of Trees and Bushland Vegetation

Please refer to the referral comments prepared by Council's Landscape Officer. Subject to recommended condition the proposal is considered to meet the objectives of this control.

C1.1 Landscaping

Please refer to the referral comments prepared by Council's Landscape Officer. Subject to recommended condition the proposal is considered to meet the objectives of this control.

D12.14 Scenic Protection Category One Areas

The control requires development to minimise the impact on existing significant vegetation. The proposed development requires the removal of significant canopy trees within the road reserve, which is contrary to this control.

Merit Assessment
The proposal is considered against the underlying outcomes of this control as follows:

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

  Comment:
  The proposal is consistent with the requirements of Clause A4.12 Palm Beach Locality in relation to desired future character.

- ***To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.***

  Comment:
  The proposed works do not result in view loss.

- ***Maintenance and enhancement of the tree canopy.***

  Comment:
  The proposal has been amended to only require the removal of one tree. The loss of this native will be mitigated through replacement planting of one tree within the site which has been identified within the amended Landscape plan. The proposal will maintain and enhancement of the tree canopy.

- ***Colours and materials recede into a well vegetated natural environment.***

  Comment:
  The stone retaining wall will harmonise with the natural environment.

- ***To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component.***

  Comment:
  As discussed throughout this report, the proposed development will not have an unacceptable impact upon the natural environment. The tree that is required to be removed will be replaced with a similar species of tree which will maintain and enhance the natural environment.

- ***To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.***

  Comment:
  The proposal does not result in view loss.

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

  Comment:
  As noted above, the proposal does not give rise to unreasonable view loss.

- ***To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.***

  Comment:
  The proposed retaining walls, which step down with the slope of the land and the replacement planting provide a design that is in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.

- ***Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.***

  Comment:
  The amended design only requires one tree to be removed to provide safe and functional access to the site and the adjoiinng propery at no. 116 Whale Beach Road which share driveway access. The existing landscaping and required replacement planting will help to mitigate and minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

CONCLUSION

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

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

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

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

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

This Section 8.2 Review Application has been assessed having regard to the reasons for refusal and the previous assessment in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979, the PLEP 2014, PDCP and the relevant codes and policies of Council.

This assessment has taken into consideration the revised plans, revised Statement of Environmental Effects, and other documentation supporting the application.

Subject to compliance with the condition requiring replacement of a canopy tree, the proposed amendments made under this review application are considered sufficient to satisfactorily address the

issues identified in the original assessment report and reasons for refusal. The amended design, which includes terracing of the retaining walls and only one tree being removed, is considered to reduce the environmental impact of the proposal on the Palm Beach locality.

In summary, it is considered that the reason for refusal of DA2020/1186 has been resolved by the amended plans and the proposal 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 Council as the consent authority grant Development Consent to REV2021/0035 for Review of Determination of Application DA2020/1186 for alterations and additions to a dwelling house on land at Lot 82 DP 10782, 114 Whale Beach Road, WHALE BEACH, 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**
DA- 100 - Rev: D	24/08/2021	Space Landscape Designs
DA-200 - Rev: D	24/08/2021	Space Landscape Designs
DA-300 - Rev: E	24/08/2021	Space Landscape Designs
DA- 400 - Rev: D	24/08/2021	Space Landscape Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Assessment Our ref: 6386-G1	1 April 2021	AssetGeoEnviro
Arboricultural Impact Assessment Report Ref: 200831_114 Whale_AIA	31 August 2020	Urban Arbor
PROPOSED DRIVEWAY WIDENING 114 WHALE BEACH ROAD, WHALE BEACH TRAFFIC ASSESSMENT Ref 21375	24 August 2021	Varga Traffic Planning Pty Ltd

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

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
DA-500 - Rev: D	24/08/2021	Space Landscape Designs

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	12/10/21

(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. **Security Bond**

A bond (determined from cost of works) of $1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition

work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

6. **Construction, Excavation and Associated Works Security Bond (Road works)**
The applicant is to lodge a bond with Council of $10000 as security against any damage or failure to complete the construction on road embankment as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

7. **Public Road Reserve Landscaping and Infrastructure**
a) A Section 139 Infrastructure Works on Council Roadway (made under the Roads Act 1993) application must be submitted to Council.

c) Evidence of the approved Section 139 Infrastructure Works on Council Roadway (made under the Roads Act 1993) is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To enable the long term retention of the desired streetscape character.

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. **Corten Steel Retaining wall**
The applicant must ensure the proposed corten steel retaining wall is erected completely within No. 114 Whale Beach Road, Whale Beach.

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

Reason: To protect road reserve

10. **Submission Roads Act Application for Civil Works in the Public Road**
The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this

development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of driveway and the related retaining wall which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. Any other retaining structures must be located within the property.

The plan shall be prepared by a qualified civil engineer. The design must include the following information:
1) the detailed structural design of the retaining wall
2) a 900 mm wide concrete dish drain shall be designed at the road edge
3) a 6 metres wide concrete driveway at the dish drain
4) the driveway must be designed in comply with Australian Standard AS 2890.
5) all utilities services on road reserve must be plotted on the submitted plan
6) a landscape plan on rad reserve must be included tree protection and proposed vegetations

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.
An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

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

11. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Tree Removal Within the Road Reserve**
a) This consent approves the removal of the following tree within the road reserve as recommended in the Arboricultural Impact Assessment dated 31 August 2020 prepared by Urban Arbor:
i) Tree 1 *Angophora floribunda*

b) Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services Section prior to removal.

Reason: Public liability.

13. **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.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Protection of Landscape Features and Sites of Significance**
All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

16. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected including:
   i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
   ii) all trees and vegetation located on adjoining properties,
   iii) all road reserve trees and vegetation not approved for removal.

b) Tree protection shall be undertaken as follows:
   i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
   ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
   iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
   iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other

vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,

vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

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

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

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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

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. **Stockpiling materials**
During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All surplus material and debris is to be removed off site and disposed of according to applicable regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

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

19. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan.

Prior to the issue of any Occupation Certificate details (from a qualified horticulturalist, landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

20. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

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

Reason: To protect wildlife habitat.

21. **Certification of Landscape Plan**
Landscaping is to be implemented in accordance with the approved Landscape Plans (Space Landscape Designs, August 2021) and these conditions of consent.

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

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

22. **Replacement of Canopy Trees**
At least one (1) locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the approved landscape plan (Space Landscape Design, August 2021).

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

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

23. **Landscape Maintenance**
a) 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.

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

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

Reason: To maintain local environmental amenity.

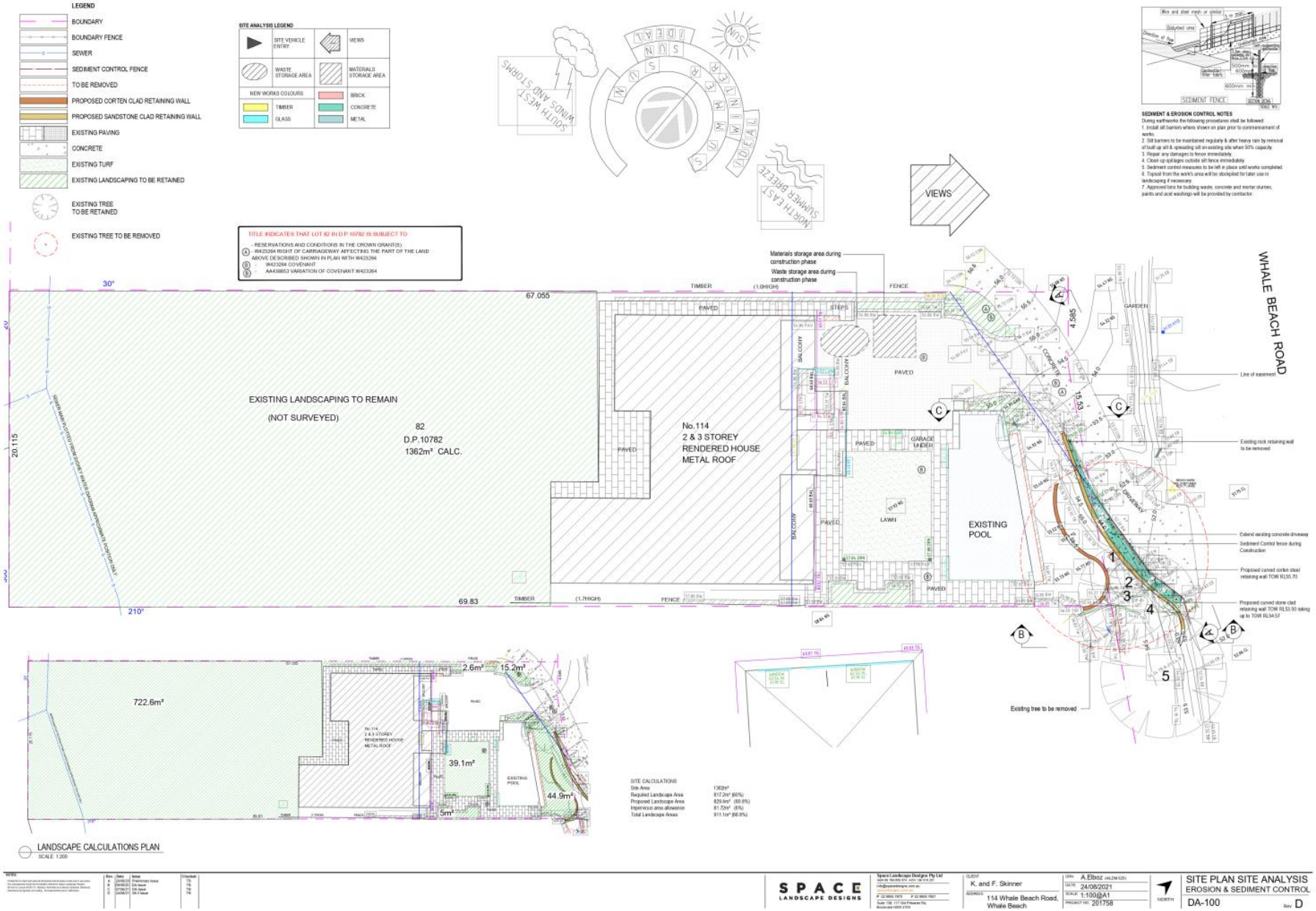
24. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

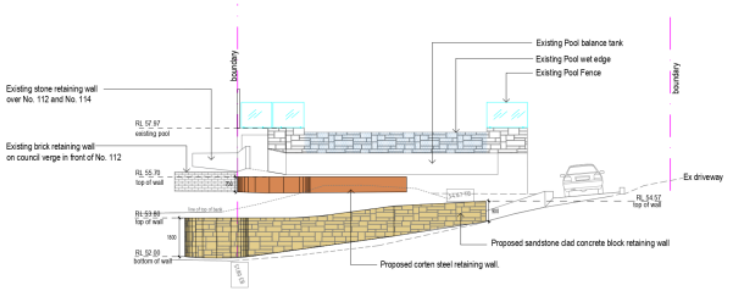
Reason: To protect wildlife habitat.

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

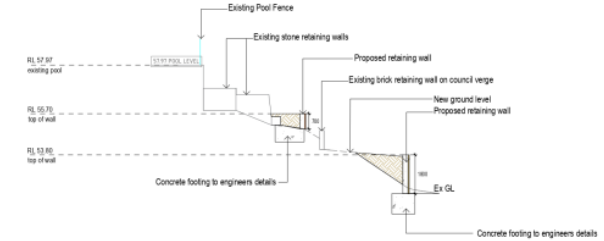
Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.


LEGEND
BOUNDARY
BOUNDARY FENCE
SEWER
SEDIMENT CONTROL FENCE
TO BE REMOVED
PROPOSED CORTEN CLAD RETAINING WALL
PROPOSED SANDSTONE CLAD RETAINING WALL
EXISTING PAVING
CONCRETE
EXISTING TURF
EXISTING LANDSCAPING TO BE RETAINED
EXISTING TREE TO BE RETAINED
EXISTING TREE TO BE REMOVED
SITE ANALYSIS LEGEND
SITE VEHICLE ENTRY
VIEWS
WASTE STORAGE AREA
MATERIALS STORAGE AREA
NEW WORKS COLOURS
TIMBER
BRICK
GLASS
CONCRETE
METAL
TITLE INDICATES THAT LOT 82 IN D.P.10782 IS SUBJECT TO
- RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
A - W423264 RIGHT OF CARRIAGEWAY AFFECTING THE PART OF THE LAND ABOVE DESCRIBED SHOWN IN PLAN WITH W423264
B - W423264 COVENANT
C - AA438853 VARIATION OF COVENANT W423264
SUN
IDEAL SUMMER SUN
SOUTH WEST WINDS AND STORMS
NORTH EAST SUMMER BREEZE
VIEWS
SEDIMENT FENCE
SEDIMENT & EROSION CONTROL NOTES
Dumq earthworks the following procedures shall be followed:
1. Install silt barriers where shown on plan prior to commencement of works.
2. Silt barriers to be maintained regularly & after heavy rain by removal of built up silt & spreading silt on existing site when 50% capacity.
3. Repair any damages to fence immediately.
4. Clean up spillages outside silt fence immediately.
5. Sediment control measures to be left in place until works completed.
6. Topsoil from the work's area will be stockpiled for later use in landscaping if necessary.
7. Approved bins for building waste, concrete and mortar slurries, paints and acid washings will be provided by contractor.
30°
67.055
20.115
210°
69.83
TIMBER
(1.7HIGH)
FENCE
EXISTING LANDSCAPING TO REMAIN
(NOT SURVEYED)
82
D.P.10782
1362m² CALC.
No.114
2 & 3 STOREY
RENDERED HOUSE
METAL ROOF
PAVED
STEPS
BALCONY
GARAGE UNDER
LAWN
EXISTING POOL
GARDEN
CONCRETE
DRIVEWAY
Materials storage area during construction phase
Waste storage area during construction phase
WHALE BEACH ROAD
Line of easement
Existing rock retaining wall to be removed
Extend existing concrete driveway
Sediment Control fence during Construction
Proposed curved corten steel retaining wall TOW RL55.70
Proposed curved stone clad retaining wall TOW RL53.50 taking up to TOW RL54.57
Existing tree to be removed
722.6m²
2.6m²
15.2m²
39.1m²
44.9m²
5m²
SITE CALCULATIONS
Site Area 1362m²
Required Landscape Area 817.2m² (60%)
Proposed Landscape Area 829.6m² (60.8%)
Impervious area allowance 81.72m² (6%)
Total Landscape Areas 911.1m² (66.8%)
LANDSCAPE CALCULATIONS PLAN
SCALE 1:200
SPACE LANDSCAPE DESIGNS
Space Landscape Designs Pty Ltd
CLIENT K. and F. Skinner
ADDRESS 114 Whale Beach Road, Whale Beach
DRN A.Elboz
DATE 24/08/2021
SCALE 1:100@A1
PROJECT NO. 201758
NORTH
SITE PLAN SITE ANALYSIS
EROSION & SEDIMENT CONTROL
DA-100
Rev D



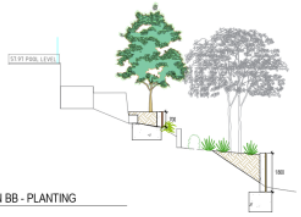
NORTH ELEVATION AA - PROPOSED WALLS
SCALE 1:100



SOUTH EAST SECTION - PROPOSED WALLS
SCALE 1:100



NORTH ELEVATION AA - PLANTING
SCALE 1:100



SOUTH EAST ELEVATION BB - PLANTING
SCALE 1:100

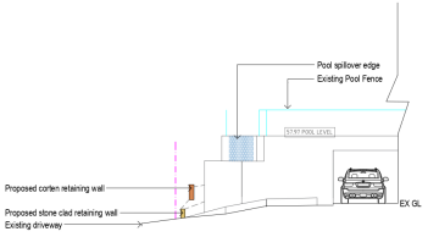
SCHEDULE OF COLOURS
AND MATERIALS



Corten Steel



Sandstone



NORTH WEST ELEVATION CC - PROPOSED WALLS
SCALE 1:100

SPACE LANDSCAPE DESIGNS
Space Landscape Designs Pty Ltd
CLIENT: K. and F. Skinner
ADDRESS: 114 Whale Beach Road, Whale Beach
DRN: A.Elboz
DATE: 24/08/2021
SCALE: 1:100@A1
PROJECT NO: 201758
NORTH
SECTION ELEVATIONS
DA-300
Rev E