



northern
beaches
council

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 15 DECEMBER 2021

A handwritten signature in black ink, appearing to read 'Ashleigh Sherry'.

Ashleigh Sherry
Manager, Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 15 December 2021
via teleconference
Commencing at 10.00am**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 8 DECEMBER 2021

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 8 December 2021 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2021/2023 - 35 BEATTY STREET, BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2021/849935
ATTACHMENTS	1 Assessment Report 2 Site Plans 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 DA2021/2023 for Alterations and additions to a dwelling house on land at Lot 8 DP 663586, 35 Beatty Street Balgowlah Heights, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2023
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 8 DP 663586, 35 Beatty Street 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:	Nicole Suzanne Elliott
Applicant:	Drafting Help 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: 42.5%
Recommendation:	Approval

Estimated Cost of Works:	\$ 709,500.00
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EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for the consideration of Development Application DA2021/2023 for alterations and additions to a dwelling house.

The maximum Floor Space Ratio (FSR) for the site is 0.4:1 (240.28sqm gross floor area). The proposed development results in a FSR of 0.57:1 (340.6sqm gross floor area), which represents a 42.5% (100.32sqm) variation to the development standard. Any variations to a principal development standard that are greater than 10% must be referred to the DPP for determination if the development relates to a class 1 or 10 structure.

The existing FSR on the site is non-compliant and equates to 0.54:1 (325.1sqm gross floor area).

Therefore, the proposal results in an additional 15.5sqm of gross floor area on the site. The additional gross floor area occurs as a result of squaring off the existing splayed wall on the front elevation of the ground floor and by enclosing the existing entryway on the lower ground floor. The additional gross floor area does not alter the overall height and footprint of the existing dwelling house and will not alter the perceived bulk and scale of the dwelling when viewed from the street or adjacent properties.

The applicant has demonstrated that compliance with the FSR standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the 42.5% variation to Clause 4.4 of the Manly LEP 2013.

The application was exhibited for 14 days and received no submissions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house. The works consist of:

Garage/Storage

- No works proposed.

Lower Ground Floor

- Construction of a portico feature.
- Enclose existing patio area.

Ground Floor

- Internal alterations to provide open plan kitchen, living and dining areas, larger pantry and new office space.
- Re-configuration of front terrace and new pizza oven.
- New vergola on the south side of the terrace.

First Floor

- Internal alterations to alter the floor plan, provide an ensuite for bedroom 2 and enlarge the master bedroom.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 8 DP 663586 , 35 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the western side of Beatty Street, Balgowlah Heights. The site is regular in shape with a frontage of 15.41m and respective depths of 38.17m and 40.485m along the northern and southern side boundaries. The site has a surveyed area of 600.7sqm. The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013 and accommodates a three storey dwelling house including an above-ground swimming pool on an elevated terrace. The landscape character of the site includes garden beds with shrubbery, a level lawn area within the rear yard, two small trees within the rear yard and rock ledges. There are no threatened species on the site. The site experiences a fall of approximately 15.3m that slopes away from the rear boundary towards the street. This represents an approximate slope of 40%. Description of Surrounding Development The surrounding built environment is characterised by detached low density residential development (i.e. dwelling houses) located on sloping sites, typically 2-3 storeys in

height. The surrounding environment does not contain a corresponding subdivision pattern.

Map:



SITE HISTORY

The site 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. 3877/90** for proposed alterations and additions approved by Council on 1 March 1991.
- **Development Application No. 60/97** for new window to dwelling approved by Council on 18 March 1997.

APPLICATION HISTORY

The Development Assessment Planner examined the subject site and the surrounds on 22 November 2021.

Following the preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the application requesting that a Clause 4.6 variation request be submitted to justify the variation to the FSR development standard. In the absence of an adequate Clause 4.6 request, Council has no power to vary a Principal Development Standard.

Subsequently, the applicant submitted a written request pursuant to Clause 4.6 of Manly LEP 2013 to justify the variation to the FSR development standard. The additional information did not alter the design of the proposal or scope of works. Therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan.

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 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to a Clause 4.6 request to justify the FSR variation. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (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 2013 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.

Section 4.15 Matters for Consideration	Comments
	(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 in relation to this application.
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 bushfire 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 Bushfire Hazard Assessment was submitted with the application that included a certificate (prepared by Bushfire Planning & Design, dated 3 September 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 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

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	General Comments This matter has been referred to Environmental Health in regards to the proposed outdoor fireplace and potential indoor fireplace. The applicant however, has advised the following: <i>The indoor fireplace will be an enclosed gas fireplace for heating, and the outside an open log fire pit type model.</i>

Internal Referral Body	Comments
	Outdoor fire pits fall outside the standards required for internal solid fuel heaters including environmental standards. The use of outdoor fire pits however, have the potential to create air pollution and impact on the amenity of surrounding properties and are regulated under the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Clean Air) Regulation 2010. As such Environmental Health raises no objections as the use of fire pit will be regulated under the above mentioned legislation. For reference backyard burning is prohibited in the Northern Beaches local government area under the Protection of the Environment Operations (Clean Air) Regulation 2010 because it pollutes the air. However, the Protection of the Environment Operations (Clean Air) Regulation 2010 does permit: <i>Clause 12 (4)</i> <i>(a) to cook or barbecue in the open, or to light, maintain or use a fire for recreational purposes such as camping, picnicking, scouting or other similar outdoor activities, so long as only dry seasoned wood, liquid petroleum gas (LPG), natural gas or proprietary barbecue fuel (including a small quantity of fire starter) is used."</i> Any future enquires received by council regarding the fire pit will be evaluated in accordance with the above mentioned legislation. Recommendation Supported - no conditions The proposal is therefore supported.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid have reviewed the proposal and provided a response stipulating that a formal response is not required based of the scope of works proposed.

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 this application (see BASIX Certificate No. A428574, dated 26 August 2021). A condition has been included with this consent to ensure compliance with the aforementioned 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:

Ausgrid have reviewed the proposal and provided a response stipulating that a formal response is not required based on the scope of works proposed.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area. Therefore, the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause

26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Coastal Management) 2018

The site is identified within the Coastal Use Area and Coastal Environment Area pursuant to SEPP (Coastal Management) 2018. Accordingly, the proposal is considered against Clauses 13, 14 and 15 of the SEPP 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.*

(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.*

(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).

Comment:

This clause is not applicable as the site is located within the Foreshore and Waterways Area pursuant to SREP (Sydney Harbour Catchment) 2005.

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—

(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.

(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).

Comment:

This clause is not applicable as the site is located within the Foreshore and Waterways Area pursuant to SREP (Sydney Harbour Catchment) 2005.

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 proposed development involves minor alterations and addition to the existing dwelling house within an existing footprint. The works have been designed to respond to the environmental constraints of the site, which includes bushfire and geotechnical hazards. For the reasons outlined above, it is considered that the proposal is unlikely to increase the risks of coastal hazards within the locality.

Conclusion

Based on the above assessment, it is concluded that the proposed development is consistent with the relevant provisions within SEPP (Coastal Management) 2018.

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	6.03m	-	Yes
Floor Space Ratio	0.4:1 (240.28sqm GFA)	Existing: 0.54:1 (325.1sqm GFA) Proposed: 0.57:1 (340.6sqm GFA)	35% 42.5%	No No

Note: GFA refers to gross floor area.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1
Proposed:	0.57:1
Percentage variation to requirement:	42.5%

Clause 4.4 of Manly LEP 2013 limits the FSR on the subject site to 0.4:1 (240.28sqm GFA). The proposed development results in a FSR of 0.57:1 (340.6sqm GFA), which represents a 42.5% (100.32sqm) variation to the development standard.

It is important to note that the existing FSR on the site is non-compliant and equates to 0.54:1 (325.1sqm GFA). Therefore, the proposal only results in an additional 15.5sqm of gross floor area on the site.

The additional gross floor area occurs as a result of squaring off the existing splayed wall on the front elevation of the ground floor and by enclosing the existing entryway on the lower ground floor.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

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

The applicants written request argues, in part:

"The subject site is identified as having a maximum permitted FSR of 0.4:1. The site area of 600.7m² and therefore a maximum gross floor area of 240.28m².

In this instance a gross floor area of 340.6m² and a floor space ratio of 0.57:1 is proposed. Thus, the proposed development requires an overall variation of 42.5% to the development standard. The existing dwelling has a gross floor area of 325.1m² or FSR of 0.54:1, which is a 35% variation to the current controls equating to an increase in the current non-compliance by 7.5%.

The variation directly relates to the reconfiguration of the existing floor plan to increase amenity whilst providing an improved design to the entry area. The minor increase in the gross floor area is located within the entry of the dwelling and is the direct result of squaring off several splayed walls in the existing dwelling design. Whilst the proposed works increase the gross floor area of the dwelling the minor increase in gross floor area is considered to be insignificant in the context of the development.

The variation will result in an increase in floor area by 15.5m² from the existing floor area which is considered to have minimal impact on the overall development. The proposed development is not considered to be excessive in size, having a total floor area of 340.6m², and provides a suitably sized dwelling in keeping with developments in the surrounding area.

Whilst being numerically non-compliant with the floor space ratio control the proposed development is not anticipated to detrimentally impact the streetscape or surrounding developments by way of solar access or privacy. In fact the proposed development will result in an improved amenity and streetscape appearance of the existing development by ensuring that the bulk and scale of the development is consistent with the existing development.

The objects of the Environmental Planning and Assessment Act 1979 are understood to be as follows:

1.3 Objects of Act

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.*

Most relevant objects to this development are objects 1.3(c) and 1.3(g) as outlined above.

The proposed development relates to alterations and additions to an existing dwelling within a residential setting. Allowing redevelopment of an existing dwelling, despite the numerical non-compliance with the FSR provisions, ensures that the dwelling can be retained on the site whilst providing an improvement to the life span of the built form. Further, allowing the minor increase in floor space ratio from the existing scenario ensures that the existing dwelling is enhanced which is considered to promote orderly and economic use and development of the land.

The design of the proposed development is for the reconfiguration of the existing floor plans to remove splayed walls promotes good design through improved functionality of the floor plan. Further the proposed alterations and additions provide open areas within the design ensuring that the amenity of the development is enhanced as a result of the development.

Whilst "environmental planning grounds" are not separately defined within the EP&A Act 1979 the proposed development is considered to provide orderly and economic use and development of the land through retention of an existing dwelling. Further the proposal meets good design principals and enhanced amenity of the dwelling through reconfiguration of the existing design without detrimentally impacting the surrounding development by way of visual bulk, privacy, amenity and solar access".

Comment:

The Development Assessment Planner agrees generally with the applicant's justification.

It is agreed that the existing FSR on the site is non-compliant and that the additional gross floor area within the dwelling house equates to 15.5sqm. The additional gross floor area is located within an existing building envelope and will have negligible impacts to the streetscape, noting that the perceived bulk and scale of the dwelling house will remain unchanged subsequent to the development.

It is accepted that the minor increase in FSR will not impact the amenity of adjacent properties, specifically in regards to views and solar access. The additional gross floor area is located within the existing building envelope and will not result in further overshadowing of living room windows or private open space on the southern adjacent site (minor additional overshadowing is caused by the pergola and not included in FSR). Additionally, given the additional gross floor area is sited within the existing building envelope the non-compliance will not compromise existing view lines towards the Sydney Harbour Catchment from surrounding private or public land.

It is further agreed allowing the minor increase in floor space ratio from the existing scenario ensures that the existing dwelling is enhanced which is considered to promote orderly and economic use and development of the land.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:

The additional gross floor area is sited within an existing building envelope and will not alter the perceived bulk and scale of the existing dwelling house. Therefore, the development will remain 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,

Comment:

The additional gross floor area within the dwelling house does not obscure any important landscape or townscape features. The works do not require the removal of significant landscape features on the site.

c) to maintain an appropriate visual relationship between new development and the existing

character and landscape of the area,

Comment:

The additional gross floor area is sited within an existing building envelope and will not alter the perceived bulk and scale of the existing dwelling house. Therefore, the development will continue to maintain an appropriate visual with the surrounding built environment. Furthermore, the works do not necessitate the removal of significant landscape features on the site.

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

Comment:

The proposed development will not result in any unreasonable amenity impacts to adjoining properties in regards to views, privacy or overshadowing. This is discussed in the section of this report relating to Clause 3.4 of the Manly DCP 2013.

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

Comment:

The site is located within a low density residential area. Therefore, this objective is not relevant.

Zone objectives

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

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

Comment:

The proposal will maintain a residential land use and therefore, will provide for the housing needs of the community within a low density residential environment.

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

Comment:

The site continues to maintain a residential land use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and the objectives of Clause 4.4 of Manly LEP 2013.

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 2 November 2021, 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).

6.9 Foreshore scenic protection area

The site is located on the Manly LEP 2013 Foreshore Scenic Protection Map. Therefore, the provisions within this clause apply to the development.

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,
- (b) measures to protect and improve scenic qualities of the coastline,
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The site is sufficiently separated from the foreshore and the proposal does not alter the height or footprint of the existing dwelling house. As such, the proposal will not detract from the visual amenity of the harbour foreshore, nor will not works result in overshadowing of the foreshore or compromise view lines towards the foreshore from nearby public or private land. For these reasons, it is considered that the development is suitable for the coastal setting based on the negligible impact on the foreshore area and surrounding environment. Moreover, the works will not create land-water based conflicts.

Conclusion

Based on the above assessment, it is concluded that the proposal demonstrates consistency with Clause 6.9 of Manly LEP 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 600.7sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 1150sqm of site area	1 dwelling on 600.7sqm site - existing and unchanged	N/A	N/A
	Dwelling Size: minimum	340.6sqm GFA	-	Yes

	117sqm GFA required (based off 4 bedrooms and 4 bathrooms)			
4.1.2.1 Wall Height	North: 8m	no change to wall height	N/A	N/A
	South: 8m	no change to wall height	N/A	N/A
4.1.2.2 Number of Storeys	2 storeys	3 storeys - existing and unchanged	N/A	N/A
4.1.2.3 Roof Height	Pitch: maximum 35 degrees	vergola: flat roof	-	Yes
4.1.4.1 Street Front Setbacks	6m (as no prevailing building line)	9m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.33m (1/3 of max. wall height)	1.35m (as existing)	42.06%	No - however no further non- compliance
	South: 2.3m (1/3 of max. wall height)	1.11m (as existing)	51.74%	No - however no further non- compliance
	Windows: no windows within 3m of side boundaries	4x new windows within 3m of side boundaries	up to 63%	No
4.1.4.4 Rear Setbacks	8m	no change	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (360.43sqm) of site area	54.05% (324.7sqm) - increased from existing as larger deck	9.91%	No - however non-compliance reduced
	Open space above ground max. 25% (81.18sqm) of total open space	40.47% (131.4sqm)	61.86%	No
4.1.5.2 Landscaped Area	Landscaped area 40% (129.8sqm) of open space	55.19% (179.2sqm) of open space	-	Yes
	3 native trees	2 native trees (existing)	33.33%	No
4.1.5.3 Private Open Space	18sqm per dwelling	> 18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban 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
4.1.1.1 Residential Density and Dwelling Size	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
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 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

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

The proposed development is found to be consistent with the Manly DCP 2013 amenity provisions for the following reasons:

Privacy

- The re-configuration of the existing first floor terrace does not provide additional opportunities for overlooking into adjacent properties.
- The re-configuration of the existing first floor terrace maintains the existing side boundary

- setbacks and will not result in additional acoustical amenity impacts.
- New windows are appropriately located to prevent direct overlooking into windows or private open space on adjacent properties.

Views

- The works do not alter the height or footprint of the existing dwelling house. As such, existing water views from upslope (west) properties will not be compromised, whilst the primary view lines from the northern and southern adjacent properties will be maintained over the front (eastern) boundaries.

Solar Access

- The additional minor overshadowing resulting from the vergola does not eliminate more than 1/3 of existing sunlight to adjacent private open space or result in overshadowing of adjacent living room windows. As such, the proposal complies with the Manly DCP 2013 solar access provision.

Other Nuisance (Odour, Fumes etc.)

- Council's Environmental Health Officer has reviewed the proposal with respect to the outdoor fire place and raised no objections.

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 Manly LEP 2013. In conclusion, the applicant has adequately justified that compliance with the FSR Development Standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the variation.

It is noted that the site is an 'undersized allotment' as defined under this control, noting that the 0.4:1 FSR standard within the locality is based off an average allotment of 750sqm. The subject site is 600.7sqm and thus, is an undersized allotment. When calculating the proposed gross floor area against a site area of 750sqm, the proposed FSR would be 0.45:1, which still exceeds the 0.4:1 standard.

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

Description of non-compliance

The proposal maintains the existing non-compliant side setbacks of 1.35m on the northern elevation and 1.11m on the southern elevation. Furthermore, the proposal includes four new windows within 3m of side boundaries, which does not meet the prescribed 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 height and footprint of the existing dwelling house will remain unaltered and thus, the proposal will not alter the perceived bulk and scale of the existing dwelling house when viewed from the street frontage. Additionally, the proposal does not necessitate the removal of significant landscape features. Overall, the proposal achieves this objective.

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:

As discussed within the section of this report relating to Clause 3.4 of Manly DCP 2013, the proposed development will not result in unacceptable amenity impacts, specifically with regard to privacy, solar access, views or odour/fumes etc. The works maintain the existing height and footprint of the dwelling house and thus, will not detract from the visual qualities of the streetscape, nor will the works reduce road visibility. Overall, the proposal achieves this objective.

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

Comment:

Flexibility is afforded with regards to the maintenance of the non-compliant side setbacks and window positioning as the development will not result in unacceptable amenity or streetscape impacts.

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 re-configuration of the terrace will increase the amount of total open space on the site. Furthermore, the proposal does not result in the removal of significant landscape features.

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

Comment:

The application is supported by a Bushfire Risk Assessment (prepared by Bushfire Planning & Design, dated 3 September 2021), which confirms that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

Conclusion

Having regard to the above assessment, it is concluded that the objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal does not meet the 60% total open space provision, however the existing total open space on the site is increased to 54.05%.

Furthermore, the total open space above ground is 40.47%, which exceeds the 25% limit. This is largely a consequence of the steep site with a 40% slope.

In addition to the above, the site only contains 2 native trees, whereas the control calls for 3 trees on a site of this size.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal does not result in the removal of significant landscaped features.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal complies with the Manly DCP 2013 landscaped area requirement. Additionally, there is limited opportunity for additional canopy tree planting on the site due to the footprint of the existing dwelling and sloping topography with numerous rock outcrops.

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

Comment:

As discussed earlier within this report, the proposed development will not result in unreasonable amenity impacts, specifically with regards to solar access, privacy and views. Furthermore, the height and footprint of the development remains unaltered and therefore, the proposal will not detract from the visual qualities of the streetscape.

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

Comment:

Suitable conditions have been imposed to ensure that stormwater is adequately managed on the site.

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The existing landscape features on the site will be maintained, which will ensure that existing potential wildlife is not compromised.

Conclusion

Having regard to the above assessment, it is concluded that the objectives of the control have been achieved. Therefore, the application is supported on merit 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 \$7,095 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$709,500.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

The proposed development involves alterations and additions to an existing dwelling house.

The FSR of the proposed development equates to 0.57:1, which represents a 42.5% variation from the FSR Development Standard. However, the works do not alter the overall height and footprint of the existing dwelling house and thus, will not alter the perceived bulk and scale of the existing dwelling house when viewed from the streetscape or adjacent properties.

The proposed development results in negligible amenity impacts to surrounding properties, specifically with regards to views, solar access and privacy.

When considered on merit, the proposed development is considered to be acceptable.

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 DA2021/2023 for Alterations and additions to a dwelling house on land at Lot 8 DP 663586, 35 Beatty Street, 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
Sheet No. SP - Site Plan	16/08/2021	Drafting Help
Sheet No. 6 - South Elevation	16/08/2021	Drafting Help
Sheet No. 7 - West Elevation	16/08/2021	Drafting Help
Sheet No. 8 - North Elevation	16/08/2021	Drafting Help
Sheet No. 9 - East Elevation	16/08/2021	Drafting Help
Sheet No. 11 - Lower Floor Plan - Proposed	16/08/2021	Drafting Help
Sheet No. 12 - Ground Floor Plan - Proposed	16/08/2021	Drafting Help
Sheet No. 13 - 1st Floor Plan - Proposed	16/08/2021	Drafting Help
Sheet No. 14 - Section	16/08/2021	Drafting Help
Sheet No. 15 - Section	16/08/2021	Drafting Help

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment Ref. J3787	14/10/2021	White Geotechnical Group
Bushfire Hazard Assessment Ref. BR-405521-A	03/09/2021	Bushfire Planning & Design
BASIX Certificate No. A428574	26/08/2021	LivSmart Solutions

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	18/10/2021	Drafting Help

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 \$7,095.00 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 \$709,500.00.

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

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

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

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

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

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

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. **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. Light colours such as off white, cream, silver or light grey colours are 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

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

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

10. **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.

11. **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.

12. **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

13. **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.

14. **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 Certifying Authority prior to the issue of the Final Occupation Certificate.

Reason: To ensure bushland management.

General Notes

01. THESE DRAWINGS SHALL BE READ IN CONJUNCTION WITH ALL ARCHITECTURAL AND OTHER CONSULTANT DRAWINGS AND SPECIFICATIONS AND WITH EACH DRAWING THE COVER SHEET OF THE PROJECT. ANY DISCREPANCIES ARE TO BE REFERRED TO THE PRINCIPAL FOR DECISION BEFORE PROCEEDING WITH THE WORK.
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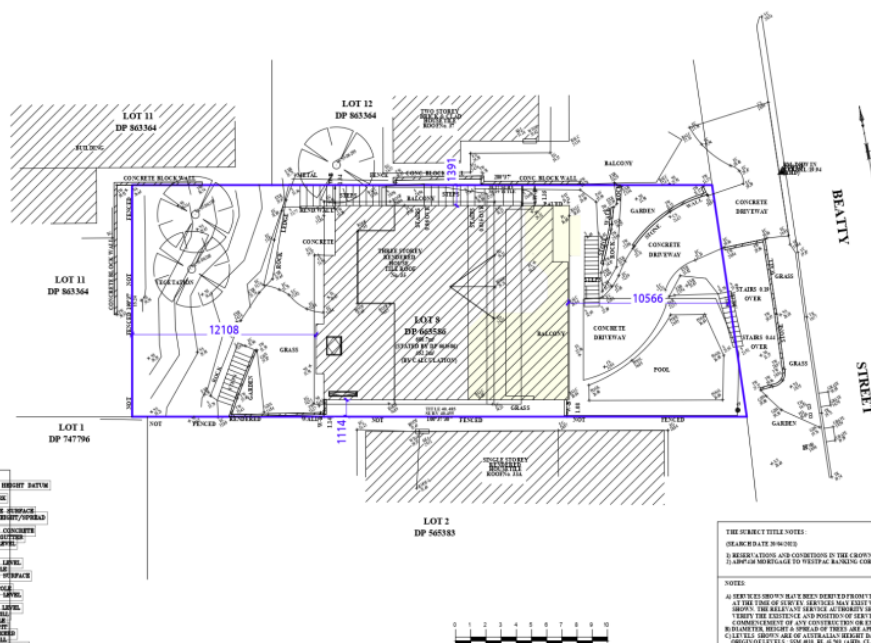
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Steel Framing

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Roofing

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SITE PLAN - PROPOSED SCALE 1:200

GENERAL NOTES

- SHOWN TO CONFIRM ALL LEVELS AND DIMENSIONS ON SITE BEFORE WORK BEGINS.
- ALL WORK TO BE IN ACCORDANCE WITH LOCAL AUTHORITIES REQUIREMENTS AND B.C.A. REQUIREMENTS.
- CONNECT DPS TO EXISTING DRAINAGE SYSTEM.
- ALL STRUCTURAL DETAILS TO ENGINEER'S SPECIFICATIONS.

NOTE:

THIS DRAWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. IF USED FOR CONSTRUCTION, THE CONTRACTOR ASSUMES ALL RESPONSIBILITY FOR LOCAL CODE COMPLIANCE. ALL DRAWINGS, PLANS, SKETCHES ETC. ARE PROVIDED TO OUR CLIENTS BASED UPON INFORMATION PROVIDED BY THE CLIENT AND DRAWN IN ACCORDANCE WITH COMMON BUILDING PRACTICES AND LOCAL CODES. NONE OF THE EMPLOYERS OF DRAFTING HELP ARE REGISTERED ARCHITECTS, ENGINEERS OR LAND SURVEYORS. ALL DIMENSIONS AND SPECIFICATIONS SHOULD BE VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ACTUAL CONSTRUCTION BEGINS. IF DIMENSIONS AND SPECIFICATIONS ARE NOT VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ACTUAL CONSTRUCTION BEGINS DRAFTING HELP WILL BE HELD HARMLESS. DRAFTINGHELP ASSUMES NO LIABILITY FOR CHANGES AND/OR REVISIONS MADE TO PLANS BY CLIENT AND/OR CONTRACTOR.

ARCHITECTURAL DRAFTING 3D VISUALISATION DEVELOPMENT APPLICATION ASSISTANCE COUNCIL COMPLIANT PLANS

- EXISTING BUILDING OUTLINE
- PROPOSED WORK

General Notes

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- PROPOSED WORK



NOTES:

PRELIMINARIES

All work to comply with the Building Code of Australia, current editions of the relevant Australian Standards, and industry codes of practice.

Select, store, handle and install propriety products or systems in accordance with the published recommendations of the manufacturer or supplier.

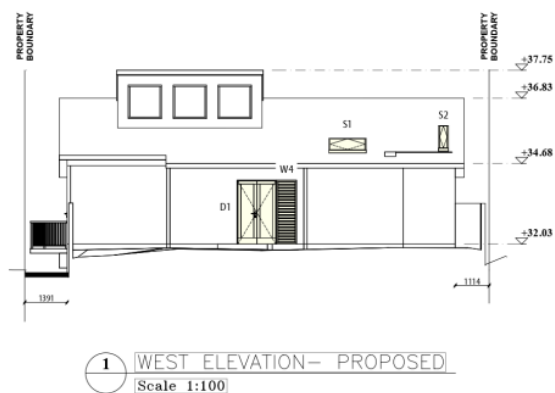
Dimensions and Setout

Do not scale from drawings. Take figured dimensions in preference to scale. Verify all dimensions on site before commencing work. The site foreman shall be responsible for verifying all dimensions and levels prior to the commencement of the Works. In the event of discrepancies in the setout of the Works, the builder should refer to the Project Designer for clarification before proceeding.

CONCRETE CONSTRUCTION

Concrete structures generally to AS3600.
Ground slabs and footings to AS2870.

Ready-mixed concrete to AS1379.
All reinforcement to be in accordance with Engineer's drawings and specification. Place all concrete uniformly over the width of the slab to achieve a level face. Provide construction joints as required. Compaction, curing and formwork stripping to comply with Aust. Stds and codes of practice.



GENERAL NOTES

- BUILDER TO CONFIRM ALL LEVELS AND DIMENSIONS ON SITE BEFORE WORK BEGINS
- ALL WORK TO BE IN ACCORDANCE WITH LOCAL AUTHORITY REQUIREMENTS AND B.C.A. REQUIREMENTS.
- CONNECT DPS TO EXISTING STORMWATER SYSTEM ALL STRUCTURAL DETAILS TO ENGINEERS SPECIFICATION

NOTES: THIS DRAWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. IF USED FOR CONSTRUCTION, THE CONTRACTOR ASSUMES ALL RESPONSIBILITY FOR LOCAL CODE COMPLIANCE, ALL DRAWINGS, PLANS, SPECIFICATIONS, AND REVISED TO OUR CLIENTS BASED UPON INFORMATION PROVIDED BY THE CLIENT AND DRAWN IN ACCORDANCE WITH BUILDING PRACTICES AND LAWS. CLOSED OUT OF DRAFTING FILE AND REGISTERED ARCHITECTS, ENGINEERS OR ARCHITECTS SHOULD BE ADVISED BY CLIENT AND ARCHITECTOR BEFORE ANY ACTUAL CONSTRUCTION BEGINS. DIMENSIONS AND SPECIFICATIONS ARE NOT VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ACTUAL CONSTRUCTION BEGINS. DRAFTING FILE IS NOT HANDLED, DRAFTING FILE ASSUMES NO LIABILITY FOR CHANGES AND/OR REVISIONS MADE BY CLIENT AND/OR CONTRACTOR.

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WALL FRAMING: WALL FRAME, SIZES AND SPACING SHALL BE IN ACCORDANCE WITH AS1684 OR AS SPECIFIED BY A PRACTISING ENGINEER.

ARCHITECTURAL DRAFTING
3D VISUALISATION
DEVELOPMENT APPLICATION
ASSISTANCE
COUNCIL COMPLIANT PLANS

LEGEND:

 EXISTING BUILDING OUTLINE

General Notes



THESE CHANGES ARE SUBJECT TO CONFIRMATION AND MAY NOT BE COPIED, LOANED OR REPRODUCED IN ANY MANNER WITHOUT THE EXPRESS PERMISSION OF CHAFFINCO (P&I). ALL DIMENSIONS AND AREAS INDICATED ON THIS DRAWING ARE APPLICABLE TO ONLY A ONE AND SUBJECT TO QUALITY CONFIRMATION. THE USER IS SUBJECT TO QUALITY APPROVALS AND IS NOT INTENDED TO BE USED FOR CONSTRUCTION PURPOSES.

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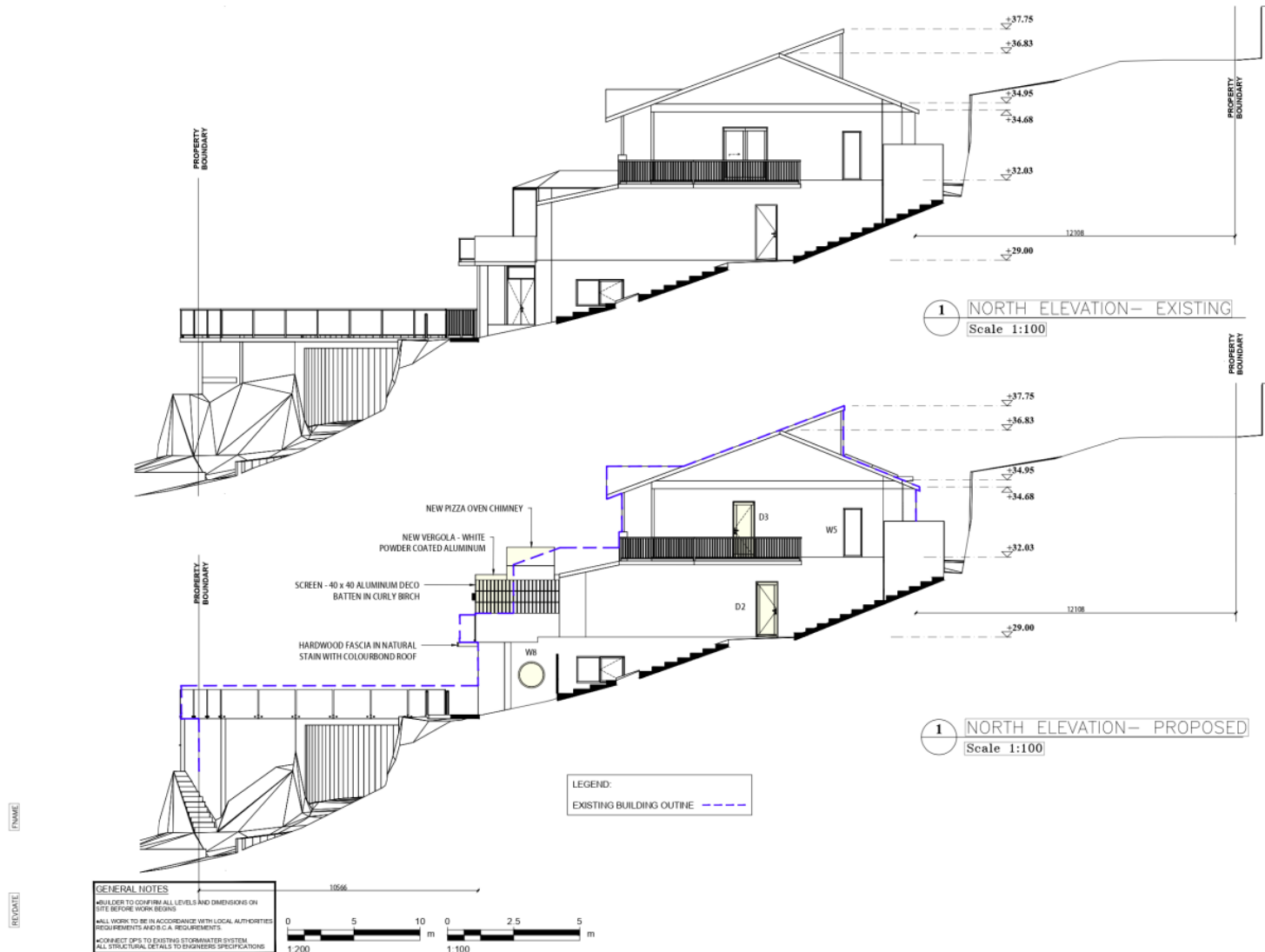
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ARCHITECTURAL DRAFTING
3D VISUALISATION
DEVELOPMENT APPLICATION
ASSISTANCE
COUNCIL COMPLIANT PLANS

LEGEND:
EXISTING BUILDING OUTLINE
PROPOSED WORK
General Notes

Project:
Address:
City:
State:
Postcode:

Sheet
8

DP No. 063886

LOT No. 8

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No.	Revisions/Issues	Date

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BALGOWLAH
NSW 2093



LEGEND:

EXISTING BUILDING OUTLINE - - - -

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GENERAL NOTES

- BUILDER TO CONFIRM ALL LEVELS AND DIMENSIONS ON SITE BEFORE WORK BEGINS
- ALL WORK TO BE IN ACCORDANCE WITH LOCAL AUTHORITIES REQUIREMENTS AND B.C.A. REQUIREMENTS.
- CONNECT DPS TO EXISTING STORMWATER SYSTEM. ALL STRUCTURAL DETAILS TO ENGINEERS SPECIFICATIONS

NOTE: THIS DRAWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. IF USED FOR CONSTRUCTION, THE CONTRACTOR ASSUMES ALL RESPONSIBILITY FOR LOCAL CODE COMPLIANCE. ALL DRAWINGS, PLANS, SPECIFICATIONS ETC. ARE PROVIDED TO OUR CLIENTS BASED UPON INFORMATION PROVIDED BY THE CLIENT AND DRAWN IN ACCORDANCE WITH CURRENT BUILDING PRACTICES AND LOCAL ORDINANCES. NO WARRANTIES OR GUARANTEES ARE MADE BY OUR ENGINEERING OR LAND SURVEYING DIVISIONS. ALL ENGINEERING AND SURVEYING REPORTS ACTUALLY CONSTRUCTION BEING. NO DIMENSIONS AND SPECIFICATIONS NOT VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ANY CONSTRUCTION BEGINS. DRAWINGS HEREIN ARE NOT BE HELD RESPONSIBLE FOR ANY DAMAGES OR LIABILITY FOR CHANGE AND/OR REVISIONS BY CLIENT AND/OR CONTRACTOR.

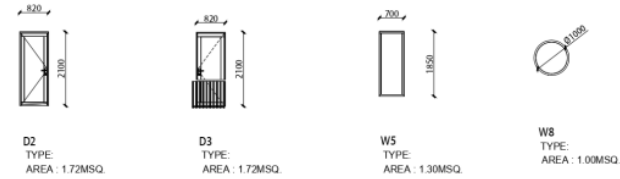
ARCHITECTURAL DRAFT 3D VISUALISATION DEVELOPMENT APPLICATION ASSISTANCE CONCORD COMPLAINT PLAN	
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Project Address No. 100/101 State Victoria Postcode 3100	Sheet 9
DP No.	663586
L.O.T. No.	8
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No.	Restoration
	
Project Name and Address ANT & NICOLE ELLIO 35 BEATTY ST BALGOULAH NSW 2093	

NEW WINDOWS AND DOORS FOR BASIX

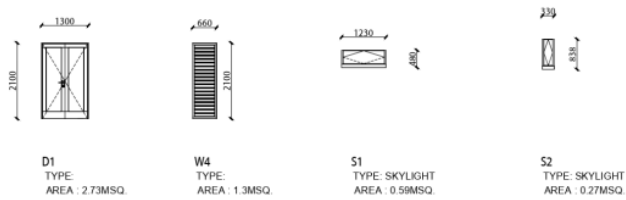
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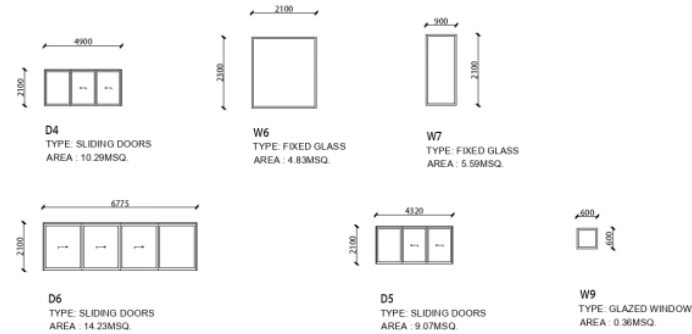
NORTH ELEVATION



WEST ELEVATION



EAST ELEVATION



NOTE: ALL WINDOWS AND DOORS MUST BE CHECKED AND MEASURED BY THE WINDOW / DOOR MANUFACTURER BEFORE ORDERING

GENERAL NOTES

ADHERER TO CONFIRM ALL LEVELS AND DIMENSIONS ON SITE BEFORE WORK BEGINS

ALL WORK TO BE IN ACCORDANCE WITH LOCAL AUTHORITIES REQUIREMENTS AND S.C.A. REQUIREMENTS

CONNECT OPS TO EXISTING STORMWATER SYSTEM

ALL STRUCTURAL DETAILS TO ENGINEERS SPECIFICATIONS



NOTE: THIS DRAWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. IF USED FOR CONSTRUCTION, THE CONTRACTOR ASSUMES ALL RESPONSIBILITY FOR LOCAL CODE COMPLIANCE. ALL DIMENSIONS, PLANS, SKETCHES ETC. ARE PROVIDED TO OUR CLIENTS BASED UPON INFORMATION PROVIDED BY THE CLIENT AND DRAFTING HELP. DRAFTING HELP IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL DIMENSIONS AND SPECIFICATIONS BEFORE ACTUAL CONSTRUCTION BEGINS. IF DIMENSIONS AND SPECIFICATIONS ARE NOT VERIFIED BY CLIENT AND/OR CONTRACTOR BEFORE ACTUAL CONSTRUCTION BEGINS, DRAFTING HELP ASSUMES NO LIABILITY FOR CHANGES AND/OR REVISIONS MADE TO PLANS BY CLIENT AND/OR CONTRACTOR.

ARCHITECTURAL DRAFTING
3D VISUALISATION
DEVELOPMENT APPLICATION
ASSISTANCE
COUNCIL COMPLIANT PLANS

LEGEND
EXISTING BUILDING OUTLINE
PROPOSED WORK

General Notes

proudly supporting **bear cottage**
Sustainable Living Solutions

Project Name and Address
ANT & NICOLE ELLIOTT
35 BEATTY ST
BALGOGLAH
NSW 2095

Project Number
663586

Sheet
18

GP No.
663586

Lot No.
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By
Reviewed By
Date

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Appendix 1 – Clause 4.6 Variation FSR

It is requested that Council consider the following request for a variation under the provisions of Clause 4.6 of Manly Local Environmental Plan 2013 (MLEP2013) during assessment of this application:

Manly Local Environmental Plan 20134.6 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.*

Clause 4.6 of the LEP - Exceptions to development standards provides the opportunity for Council to vary the controls based on the merits of the application. It is considered that the current application satisfies the Clause 4.6 criteria in the LEP, and therefore should be supported, as detailed below.

(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.

The FSR development standard is not expressly excluded from the operation of Clause 4.6.

(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*

As discussed below, it is unreasonable and unnecessary to require compliance with the FSR control as all key Clause 4.6 requirements are satisfied.

The proposed FSR slightly exceeds the maximum FSR for the development by 0.04:1. It is considered that the application, and in particular the proposed FSR, should be supported as:

The subject site is zoned 'R2 Low Density Residential' under Clause 2.1 of the MLEP2013.

The objectives of the zone are:

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

The proposed development is for a low-density residential dwelling being compatible with the existing and future character of the locality. The proposed development has been designed to meet the day to day needs of the residents and is provided with appropriate services and facilities. Furthermore, the development is designed to provide a high level of amenity for adjoining residents whilst considering the amenity of the site and surrounding areas.

The proposal, including FSR variation, is consistent with the objectives of the R2 Low Density Residential zone in that the proposal will continue to provide low-impact residential development. The existing dwelling has a variation from the development standard and the proposed variation is the direct result of this existing non-compliance being maintained.

Therefore, the proposal is considered to meet the objectives of the R1 Zone.

The objectives of Clause 4.4 are:

- (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.*

The objectives of this control are understood to be a measure to ensure the dwelling does not have an unreasonable impact on adjoining properties or the streetscape by way of bulk and scale whilst ensuring that the existing character of the area is respected by the development.

The proposal does not result in an unreasonable bulk and scale of the built form and will be consistent with streetscape and character of the locality. As above, the FSR proposed represents a numerical non-compliance whereby the proposal sits well within the locality and presents a compatible built form, bulk and scale to other existing dwellings in the area, and to the desired building scale as intended by Clause 4.4 FSR controls.

The existing dwelling has varied roof lines, an articulated design and allows for a reasonable level of solar access to the adjoining properties. The existing dwelling is retained as part of the proposed development and is considered to remain in keeping with the streetscape following the internal alterations.

The level of articulation within the building ensures that the visual bulk of the dwelling is not excessive when viewed from the street or surrounding properties. The proposed works are in keeping with recent development throughout the area and is considered

to enhance the streetscape character of Beatty Street. The site is located on the high side of the street with the proposed development generally contained within the existing dwelling to minimise impact on the adjoining properties. This ensures the impact of the development on the streetscape is minimised and is considered to more than counteract the increase in floor area.

As there is no perceived impact on the streetscape character of the area or the amenity of adjoining properties as a result of the additional floor area, the proposed dwelling is considered to be able to meet the objectives of the floor space ratio control despite the numerical non-compliance. It is recommended that the application be supported, despite the required variation, as it will complement and blend with the character of the area and is in keeping with the objectives of the zone and specific development control.

The proposed design is considered to be a practical result for the site and creating no adverse environmental effects on the neighbourhood or directly adjoining properties. Further the FSR development standard appears to have been abandoned in this area of Balgowlah with several developments with increased FSR present in the suburb.

In the circumstances of this particular case, it is considered that strict compliance with the floorspace ratio requirements of Manly Local Environmental Plan 2013 is unreasonable and unnecessary as the 7.5% increase to the existing dwelling gross floor area is generally in keeping with the existing dwelling size. The required variation does not result in a dwelling that is inconsistent with the character of the area and will result in no greater impact than that of a compliant proposal. Further, the floor area for the proposed residence can still attain the objectives of the Environmental Planning and Assessment Act 1979, Zone R2 Low Density Residential and the subject development standard despite the numerical non-compliance. The existing prominence of the dwelling is maintained by the development and is considered to be provide sufficient environmental planning ground to justify the variation. Thus the variation should be supported in this instance.

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

The requested variation relates to Clause 4.4 (2) as shown below:

4.4 Floor space ratio

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

The subject site is identified as having a maximum permitted FSR of 0.4:1. The site area of 600.7m² and therefore a maximum gross floor area of 240.28m².

In this instance a gross floor area of 340.6m² and a floor space ratio of 0.57:1 is proposed. Thus, the proposed development requires an overall variation of 42.5% to the development standard. The existing dwelling has a gross floor area of 325.1m² or FSR of 0.54:1, which is a 35% variation to the current controls equating to an increase in the current non-compliance by 7.5%.

The variation directly relates to the reconfiguration of the existing floor plan to increase amenity whilst providing an improved design to the entry area. The minor increase in the gross floor area is located within the entry of the dwelling and is the direct result of squaring off several splayed walls in the existing dwelling design. Whilst the proposed works increase the gross floor area of the dwelling the minor increase in gross floor area is considered to be insignificant in the context of the development.

The variation will result in an increase in floor area by 15.5m² from the existing floor area which is considered to have minimal impact on the overall development. The proposed development is not considered to be excessive in size, having a total floor area of 340.6m², and provides a suitably sized dwelling in keeping with developments in the surrounding area.

Whilst being numerically non-compliant with the floor space ratio control the proposed development is not anticipated to detrimentally impact the streetscape or surrounding developments by way of solar access or privacy. In fact the proposed development will result in an improved amenity and streetscape appearance of the existing development by ensuring that the bulk and scale of the development is consistent with the existing development.

The objects of the Environmental Planning and Assessment Act 1979 are understood to be as follows:

1.3 Objects of Act

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.*

Most relevant objects to this development are objects 1.3(c) and 1.3(g) as outlined above.

The proposed development relates to alterations and additions to an existing dwelling within a residential setting. Allowing redevelopment of an existing dwelling, despite

the numerical non-compliance with the FSR provisions, ensures that the dwelling can be retained on the site whilst providing an improvement to the life span of the built form. Further, allowing the minor increase in floor space ratio from the existing scenario ensures that the existing dwelling is enhanced which is considered to promote orderly and economic use and development of the land.

The design of the proposed development is for the reconfiguration of the existing floor plans to remove splayed walls promotes good design through improved functionality of the floor plan. Further the proposed alterations and additions provide open areas within the design ensuring that the amenity of the development is enhanced as a result of the development.

Whilst "environmental planning grounds" are not separately defined within the EP&A Act 1979 the proposed development is considered to provide orderly and economic use and development of the land through retention of an existing dwelling. Further the proposal meets good design principals and enhanced amenity of the dwelling through reconfiguration of the existing design without detrimentally impacting the surrounding development by way of visual bulk, privacy, amenity and solar access.

- (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.*

The proposal is able to satisfy 3(a) and 3(b) as discussed above, therefore the proposed development is considered to being the public interest. Further the proposed alterations and additions are orderly and economic use and development of the land whilst providing good design and amenity for the occupants of the development.

- (5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.*

There is considered to be no public benefit in refusing the application (for the reasons stated above) so as to ensure that full compliance with the maximum floor space ratio control is achieved, as discussed above. The contravention of the standard does not raise any matters of state or regional significance.

Accordingly, Council's agreement is sought to the proposed variation in maximum FSR for the site.

ITEM 3.2**DA2021/1450 - 117 HUDSON PARADE, CLAREVILLE -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SECONDARY DWELLING**

REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2021/852227
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 DA2021/1450 for Alterations and additions to a dwelling house including a secondary dwelling on land at Lot 55 DP 13291, 117 Hudson Parade, Clareville, subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1450
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 55 DP 13291, 117 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Alterations and additions to a dwelling house including a secondary dwelling
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Roger Erroll Ornek Jennifer Lee Meredith
Applicant:	Roger Erroll Ornek

Application Lodged:	27/08/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	13/09/2021 to 27/09/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 11.41%%
Recommendation:	Approval

Estimated Cost of Works:	\$ 427,000.00
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EXECUTIVE SUMMARY

The application is referred to the Development Determination Panel (DDP) as the proposal involves a breach of the height of building development standard of 11.41%. The building footprint is situated on a slope that is not in excess of 16.7 degrees (that is, 30%), and therefore does not qualify for a variation of up to 10m in accordance with subclause 2D of Part 4.3 PLEP 2014.

The application was notified for a period of 14 days in accordance with the Northern Beaches Community Consultation Plan. As a result of the notification period, one submission was received that was in support of the application and zero objections were received.

The portion of the new development which encroaches the height standard relates to an extension of the existing roof over the existing first floor deck at the front of the property. When considering the proposal, it is important to recognise that the extension does not propose an increase to the ridge height of the existing dwelling.

The application also proposes minor alterations to the existing garage, re-location of the existing access driveway and a new secondary dwelling. The new secondary dwelling proposes a rear setback non-compliance that is subject to a merit assessment and considered reasonable on the grounds that it is not a visually imposing structure and does not unreasonably impact surrounding amenity. The access driveway works encroach within Council's road reserve and are subject to suitable conditions of consent included by Council's Development Engineer.

Council's Landscape and Biodiversity Officer have requested further information during the assessment process in relation to the impact of the development works on significant on-site vegetation, particularly a spotted gum at the rear in proximity to the proposed secondary dwelling and a *Corymbia maculata* in proximity to the front roof extension. These issues have since been resolved subject to conditions and in keeping with the current Arboricultural Report which states that the development does not propose the removal of any vegetation and existing landscaping will be retained on the site.

It is also noted that a prior development consent was granted and has since lapsed under N0265/08 for 'Alterations and Additions' to the subject dwelling. Despite the prior consent gaining approval to convert the first floor deck into internal floor space, the current application before Council wishes to now retain the original layout and rather provide additional shading to the existing deck.

Overall, the non-compliances in relation to the building height, rear building line and landscaped open space are supported based on merit considerations. The building height of the proposal is supported pursuant to Clause 4.6 of PLEP 2014. Suitable conditions have also been included to protect the visual privacy of the adjoining property to the north-east.

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

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for alterations and additions to an existing two to three storey dwelling house including associated driveway works as well as a new secondary dwelling at the rear of the property.

Parking and Driveway

It is proposed to relocate the existing access driveway at the front of the site and install a new concrete driveway, hardstand turning bay, new pedestrian stairs as well as associated retaining walls. The existing driveway is to be replaced with landscaped area. The driveway works encroach within Council's Road Reserve and are subject to conditions of consent that ensure the protection of Council's road asset.

Garage Level

Minor works to re-locate the garage door to the north-western frontage as well as fill-in and convert the existing garage door for pedestrian access.

First Floor

Extend existing roof over the existing first floor deck

New Secondary dwelling

A new secondary dwelling is proposed at the rear of the site which includes one bedroom, one bathroom, an open-plan kitchen, living and dining area, front access stairs and surrounding decking.

Additional information

During the course of the assessment, Council requested amended information at various stages that was deemed necessary in order to properly determine the application. This included further section plans of the main dwelling, as well as further information required to adequately satisfy the requirements of Council's Landscape, Biodiversity and Development Engineering Officers.

A site inspection was conducted by Council's planning officer on 6 December 2021.

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 Local Environmental Plan 2014 - 5.4 Controls relating to miscellaneous permissible uses
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 55 DP 13291 , 117 Hudson Parade CLAREVILLE NSW 2107
Detailed Site Description:	The subject site consists of 1 allotment located on the south-eastern side of Hudson Parade, Clareville. The site is generally regular in shape with an angled

frontage of 17.17m along Hudson Parade and a depth of 63.56m along the north-eastern side boundary. The site has a surveyed area of 1056m².

The site is located within the C4 Environmental Living zone pursuant to PLEP 2014 and accommodates an existing two-three storey dwelling house with an attached garage.

The site experiences a fall of approximately 16m sloping in a north-westerly direction towards the street frontage.

The site is substantially landscaped with several native trees in both the front and rear yards.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by low density residential development of varying architectural styles and within a landscaped setting.

Map:



SITE HISTORY

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

Application **N0265/08** for Alterations and additions to the dwelling was approved by Council staff on 13/11/2008.

The above application proposed internal reconfigurations that included enclosing and converting the first floor deck into internal floor space including a bedroom and ensuite. However, as is evident following a site visit, the development approval was never acted upon and the main dwelling retains the

original layout.

The first floor deck is now to be retained with the roof to be extended over the top, as is subject to the current development application before council.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to further section plans, as well as information to satisfy the requirements of Council's Landscape, Biodiversity and Engineering Officers. The amended plans did not result in an increased environmental impact and therefore did not require additional public exhibition in accordance with Council's Community Participation Plan. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the

Section 4.15 Matters for Consideration	Comments
	consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 13/09/2021 to 27/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Paul Maxwell Bide	13 Delecta Avenue CLAREVILLE NSW 2107

One submission was received from the owners of 13 Delecta Avenue, Clareville who advised of their support for the application and raised no objections to the proposed works.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Landscape Officer	The development proposal is for alterations and additions to an existing dwelling and the construction of secondary dwelling. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • C1.11 Secondary Dwellings and Rural Workers Dwellings • D1 Avalon Locality The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the E4 Environmental Living zone. The existing site is typical of the locality with tall native canopy trees prominent. The Statement of Environmental Effects notes that the development does not propose the removal of any vegetation and existing landscaping will be retained on the site, and thus no Landscape Plan is provided. An Arboricultural Impact Assessment is provided with recommendations for tree protection measures for existing tree numbers 2, 5 and 6 - all Spotted Gums, and specific requirements for intervention by a Project Arborist to locate pier footings for the proposed secondary dwelling to reduce impacts to

Internal Referral Body	Comments
	existing tree numbers 3 and 4 - Spotted Gum, and 7 - Grey Ironbark. The development application documents show that the proposed secondary building and roof is in close proximity to existing tree number 4 - Spotted Gum, and concern is raised regarding ongoing viability of trees in such close proximity due to risk to property and persons, and in discussion with the applicant, it is required to setback the building and roof more than 2 metres from tree number 4. Conditions of consent shall be imposed in this regard, and additionally the proposed decking and stairs shall be realigned accordingly.
NECC (Bushland and Biodiversity)	Updated Biodiversity Referral (25th November 2011) The Arborist Report (November 2021) has been further amended to reflect updated site plans which has resulted in the retention of all trees within the site. This is supported in the SEE which states "the development does not propose the removal of any vegetation and existing landscaping will be retained on the site". As the proposal does not require any native tree removal from within the site, the BOS is not triggered and a BDAR is not required to be submitted with the application. Subject to the retention of all trees within the site, and these conditions of consent, Council's Biodiversity referrals team are satisfied that the proposed development complies with applicable biodiversity legislation and controls. Updated Biodiversity Referral (29th October 2021) It is noted that an amended Arborist Report (October 2021) has been submitted since the original Biodiversity referral, which now includes Section 9: Tree Management Plan. This provides further information regarding the location of the trees in relation to the proposed development. The amended Arborist Report still recommends the removal of Tree 6 due to structural weakness. Should this tree be required to be removed, a BDAR will be required to be submitted with the application. If the tree is proposed for retention, this needs to be clearly stated in amended documentation, including the updated SEE. Council's Landscape Referrals team have identified concerns regarding the retention of Tree 4 due to close proximity to the proposed development and have thus requested a redesign to ensure future retention of this tree. Removal of any trees from within the BV map will require the preparation and submission of a BDAR, thus all documents submitted with the application are to be consistent, and clearly identify which trees are proposed for removal as part of the application. Upon receipt of amended Architectural Plans as requested by

Internal Referral Body	Comments
	Council's Landscape team, Council's Biodiversity referrals team will recommence assessment of the application. Original Biodiversity Referral (27th September 2021) Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related controls: • Biodiversity Conservation Act 2016 (BC Act) • Biodiversity Conservation Regulation 2017 • Pittwater LEP cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community The Development Application seeks consent for alterations and additions to the existing dwelling and the construction of a secondary dwelling within the rear yard. The property is located within the Biodiversity Values (BV) Map designated by the NSW State Government (Department of Planning, Industry and Environment), making it subject to the provisions of the NSW Biodiversity Conservation Act 2016. The removal of native vegetation from within an area mapped on the Biodiversity Values Map will trigger the Biodiversity Offsets Scheme (BOS) and require a Biodiversity Development Assessment Report (BDAR) to be prepared by an accredited assessor and submitted with the application. The Statement of Environmental Effects (Watermark Planning, May 2021) stated that <i>"no vegetation will be impacted by the minimal development proposed on the already developed site, with an arborist report provided in support of the proposal"</i>. However, the Arboricultural Impact Assessment (Smart Arbor Professional Consulting, May 2021) has recommend the removal of one (1) native tree (Tree 6: <i>Corymbia maculata</i>). It is unclear where this tree is located in relation to the proposed development as Section 9: Tree Management Plan has not been included in the report. The report is to be updated accordingly and resubmitted. Furthermore, the detailed Site Survey (Veris, August 2021) has not identified and plotted trees within the rear yard. Should tree removal be required, the SEE is to be updated to include details of vegetation required for removal. The applicant is to engage an accredited assessor trained in application of the Biodiversity Assessment Method (BAM) to determine if the BOS is triggered and whether a BDAR is required. Should a BDAR be required, it should take into account any direct and prescribed impacts to Pittwater Spotted Gum Forest EEC, which is listed as a Serious and Irreversible Impact (SAIL) entity under the BOS. Any impacts which are considered to be serious and irreversible to Pittwater Spotted Gum Forest EEC as a result of the development

Internal Referral Body	Comments
	will not be supported by Council. Upon receipt of the updated Arborist report, SEE and BDAR (if determined required by an accredited assessor), Council's Biodiversity referrals team will recommence assessment of the DA.
NECC (Development Engineering)	The proposal is for a secondary dwelling and alteration to the existing dwelling a new driveway. <u>Stormwater</u> The proposal increases the impervious area by more than 50m2. As such OSD is required in accordance with Council's Water Management for Development Policy Clause 9.3.1. <u>Access</u> The proposal includes the relocation of the driveway. The proposed grades for the new driveway appears to be steep. The Applicant shall provide a long-section at both edges of the proposed access driveway to the garage and demonstrate compliance with AS2890. The driveway shall incorporate one of Council's standard vehicle crossing profiles. Details for any proposed retaining associated with the driveway are to be shown on the plans. Additionally, as the pedestrian access stairs are to be demolished the applicant shall show on the plan the proposed pedestrian access to the main dwelling and the proposed secondary dwelling. The proposed application cannot be supported by Development Engineering due to lack of information to address: • <i>Vehicle access for the development in accordance with Clause B6 Access and Parking.</i> • <i>Stormwater drainage for the development in accordance with Clause 9.3.1 of Council's Water Management for Development Policy.</i> Additional Information Received on 14/10/2021 Driveway longsections have been reviewed. Stormwater plans with the provision of OSD is satisfactory. No objections to approval subject to conditions as recommended.
Parks, reserves, beaches, foreshore	The development application is for alterations and additions to an existing dwelling and construction of a secondary dwelling. The site adjoins a portion of Council Reserve along the western boundary that is utilised for pedestrian access and connection to Hilltop Road. Given the small width of the Reserve land adjoining the site and its function, no encroachment into Council's Reserve is permitted by construction works to ensure the continued public benefit over the adjoining land. Construction access will not be permitted over Council's Reserve including delivery and storage of materials.
Property Management and Commercial	Property Comments The proposal involves some cutting and retaining of Council's road

Internal Referral Body	Comments		
	reserve for the proposed new driveway. Therefore, the TCI team within Council will be required to provide owner's consent for these proposed works on Council road reserve including any conditions.		
Road Reserve	There is no impact on existing road infrastructure assets. Development Engineering to condition the driveway amendments and reinstatement of the redundant driveway and layback.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the subject property adjoins a heritage item		
	Angophora Reserve and Angophora Costata Tree - 93 Palm Grove Road, Avalon Beach		
	Details of heritage items affected		
	Details of the item as contained within the Pittwater inventory is as follows:		
	<u>Statement of Significance</u> Angophora Reserve and Angophora costata tree are significant in that the tree is thought to be the biggest of its species and the reserve provides a small taste of the Peninsula similar to what it was like pre-settlement and provides significant samples of vegetation communities and fauna habitats that are under threat. It is one of the most significant reserves in an area that is now dominated by suburbia and true bushland is restricted to mostly small reserves.		
	<u>Physical Description</u> Angophora Reserve is located in the core of the Barrenjoey Peninsula bordering the suburbs of Avalon, Clareville and Taylors Point. The reserve consists of 18.5 hectares of urban bushland in Avalon on the Barrenjoey Peninsula. It is dominated by remnant forest and woodland vegetation communities.		
	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			
RAIA Register of 20th Century Buildings of Significance	No		
Other	N/A		

Internal Referral Body	Comments
	Consideration of Application The proposal seeks consent for a new driveway, alterations to the main dwelling and a detached secondary dwelling in the rear yard. The proposal directly adjoins part of the heritage item being the public walkway to the south. This walkway is part of the heritage listed reserve, however it is considered less significant than the reserve proper which is located some distance away to the east on the other side of Hilltop Road. Given the above and the scale of the works, 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 PLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No Further Comments COMPLETED BY: Brendan Gavin, Principal Planner DATE: 1 September 2021

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.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

External Referral Body	Comments

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 use is defined under PLEP 2014 as a **secondary dwelling** which 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 as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. The site is located within the C4 Environmental Living zone and, as such, the proposed use is permissible with consent under PLEP 2014.

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.	Site will contain one principle dwelling and one secondary dwelling.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on	The floor area of the secondary dwelling is 60sqm.

the land under another environmental planning instrument, that greater floor area.	
(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 site area is 1056sqm. No additional parking is provided, the application is not recommended for refusal on this basis.

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

Clause 24: No subdivision

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

Conclusion

The proposal is compliant and consistent with the provisions of the SEPP ARH.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1210412S dated 22 July 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

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:	8.5m (main dwelling) 5.5m (secondary dwelling)	9.47m 4.85m	11.41% -	No Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.47m
Percentage variation to requirement:	11.41%

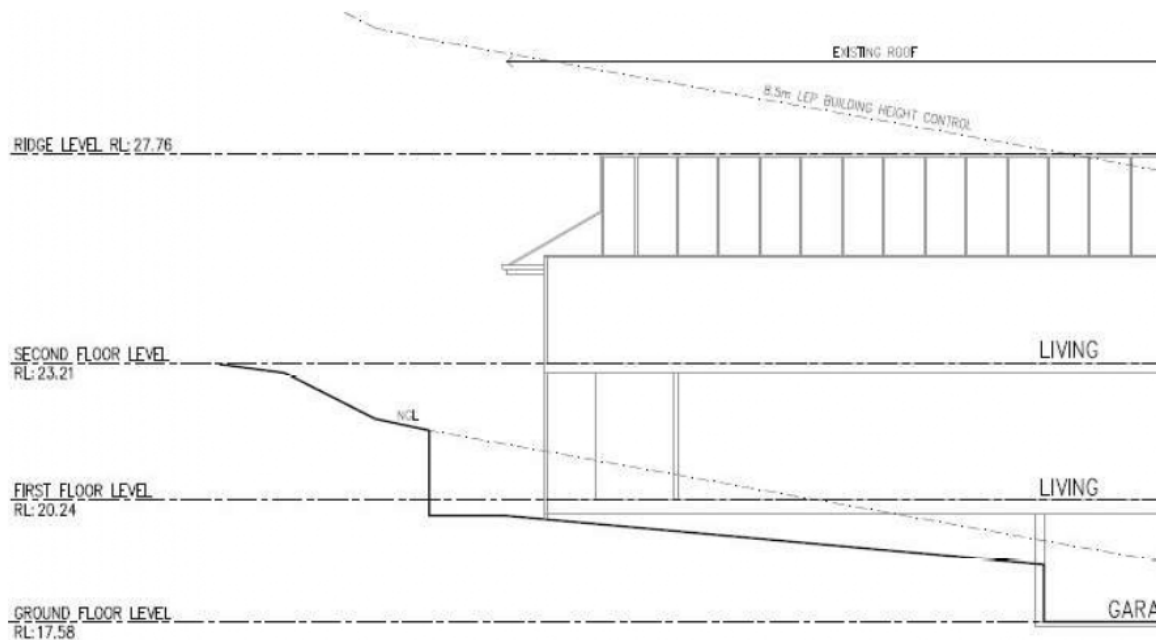


Figure 1: Proposed building height as per section plan

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The variation is for a very small component of the structures,
- The proposed variation will allow for improved shading and amenity onsite,
- The built form proposed is consistent with other buildings in the locality,
- Amendments to achieve compliance would result in an architecturally less pleasing result with no gain for the site, neighbours or the streetscape.
- The objectives of the E4 zone can be met despite the numerical variation,
- The variation to the building height will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community,
- There will be no unreasonable amenity or environmental impacts as a result of the non-compliance.

It is agreed that the social and economic welfare of the community is not compromised as the proposal does not alter the approved ridge height of the existing dwelling and therefore will not result in an adverse impact upon the amenity or visual character of the streetscape. Additionally, it is acknowledged that the existing and desired character of the area is maintained as the works generally maintain the overall bulk and scale of the existing dwelling and will not become visually overbearing upon the locality.

Whilst the proposal doesn't comply with Council's maximum building height development standard, it is agreed that this non-compliance will not create unreasonable impacts with regard to view loss, overshadowing, or bulk and scale. Overall, it is considered that demanding compliance with Council's maximum height standard is both unreasonable and unnecessary for this proposal, due to the deemed lack of impact to the amenity of surrounding properties or the public domain.

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 C4 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:

The proposed development has been designed to be commensurate in scale, height and character to existing and the desired future development in the area consisting of low to medium residential development.

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

Comment:

The proposed additions will not become visually overbearing upon the streetscape, whilst the varied roof line and wall planes provide additional articulation to reduce building mass.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The shadow diagrams accompanying the application demonstrate that no adverse overshadowing will result from the proposal.

d) to allow for the reasonable sharing of views,

Comment:

The height of the proposed works are sufficiently integrated into the pervading structure of the

dwelling and will not disrupt view lines.

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

Comment:

The siting of the dwelling responds sensitively to the natural topography of the site and the proposed works are sufficiently integrated into the existing building footprint and do not alter the topography of the site.

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

Comment:

The design, colours and materials will not impact on the natural environment and no trees are proposed for removal. The subject site is not a heritage item and is not located in proximity to a heritage item. An officer from the Aboriginal Heritage Office has reviewed the application and made no objection to approval.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

The proposal is for alterations and additions to an existing dwelling to allow for additional shading of an existing deck that is sufficiently integrated into the footprint of the previously approved dwelling.

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

Comment:

The development will have no impact on any special ecological, scientific or aesthetic values, as the proposed works which protrude above the height of buildings standard are primarily located on the already disturbed portion of the lot.

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

Comment:

The development retains the existing single dwelling density and remains below the canopy height in the locality and is consistent with surrounding dwellings.

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

Comment:

There will be no impact on riparian and foreshore vegetation and wildlife corridors.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 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 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

5.4 Controls relating to miscellaneous permissible uses

The proposed Secondary Dwelling will result in a gross floor area of 60m². As such, the proposal achieves compliance with 5.4(9)(a).

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Unaltered	-	Yes
Rear building line	6.5m	Unaltered (dwelling) 3m - 5.69m (secondary dwelling)	- 12.46% - 53.85%	Yes No
Side building line	2.5m (north-east)	Unaltered (dwelling) 3.18m (secondary dwelling)	- -	Yes Yes
	1m (south-west)	Unaltered (dwelling) 2m (secondary dwelling)	- -	Yes Yes
Building envelope	3.5m (north-east)	Unaltered (dwelling) Within envelope (secondary dwelling)	- -	Yes Yes
	3.5m (south-west)	Unaltered (dwelling) Within envelope (secondary dwelling)	- -	Yes Yes
Landscaped area	60% (633.6sqm)	56.5% (596.6sqm)	5.83%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 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
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	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
B6.6 On-Street Parking Facilities	Yes	Yes
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
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	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B6.1 Access driveways and Works on the Public Road Reserve

The proposal involves construction works located within Council's road reserve to accommodate the proposed re-location of the access driveway.

As a result, suitable conditions have been included within this consent to ensure that public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

C1.5 Visual Privacy

Description of non-compliance

The control requires private open space on adjoining properties to be protected from overlooking through 9m of building separation or protect overlooking of more than 50% of the private open space to a lower level dwelling.

The proposed secondary dwelling is elevated on pier footings at the north-east corner at a height of approximately 2.5m above NGL. The proposed decking is setback 3.18m from the rear private open space of the adjoining property to the north-east (115 Hudson Parade) and has natural overlooking opportunities due to the sloping topography.

In addition, window W01 on the north-east elevation contains a slightly increased setback of 4.24m compared to the decking, however contains a reduced sill height that does not protect against overlooking opportunities. In addition, the window adjoins a kitchen which is conducive to high volumes of pedestrian traffic.

It is noted that the site is substantially vegetated along the north-eastern boundary, however screen planting can not be solely relied upon to mitigate privacy impacts as it is a non-permanent structure and contains seasonal variables.

Figures 2 and 3 below illustrate the standing view from the natural ground level of where the secondary dwelling is to be located, looking towards the rear private open space of 115 Hudson Parade.

Figure 2



Figure 3



Merit consideration

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

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

Comment:

As a result of the elevation and location of the windows as well as the proximity to the side boundary it is considered that mitigation measures are required to ensure potential privacy impacts are reasonable.

To ensure a reasonable level of visual privacy is maintained between the two properties, a suitable condition has been included within this consent requiring the sill height of W01 to be a minimum of 1.5m from the finished floor level of the lower floor level of the secondary dwelling, or alternatively to incorporate obscure glazing up to a height of 1.5m.

Furthermore, a condition of consent is also included for a privacy screen to be erected for the outermost length of the decking area on the north-east elevation of the secondary dwelling up to a height of 1.65m above FFL of the lower floor level.

Subject to compliance with these conditions, the proposal will optimise visual privacy through good design.

A sense of territory and safety is provided for residents.

Comment:

It is assumed that a sense of territory and safety will be provided for the residents, subject to the conditions outlined above.

Concluding Remarks

Subject to compliance with the conditions listed above, the proposed development will demonstrate consistency with the outcomes of this control.

D1.9 Side and rear building line

Description of non-compliance

The control prescribes a 6.5m rear setback. Due to the skewed angle of the rear boundary, the proposed secondary dwelling is setback between 3m - 5.69m from the rear boundary, which does not meet the numeric requirement.

The underlying outcomes of the control are addressed as follows:

Merit Consideration

To achieve the desired future character of the Locality

Comment:

The proposed development is consistent with the requirements of Clause A4.1 Avalon Locality, which details the desired future character for the subject site and surrounds.

The bulk and scale of the built form is minimised.

Comment:

The proposed secondary dwelling adheres to the prescribed side building line controls as well as the relevant building height and floor area standards, which assists in the reduction of visual impacts resulting from the development. Furthermore, the secondary dwelling presents as a ground floor level structure to the rear adjoining lot, which is consistent with the scale of nearby development. The overall façade is well articulated with varied wall and roof planes whilst incorporating various external finishes, which will further assist in reducing the bulk and scale of the development.

For these reasons, it is concluded that the bulk and scale of the built form is minimised.

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

Comment:

The proposed development does not obstruct any views or vistas to or from public or private places.

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

Comment:

As above, the proposed development allows for view sharing in that its siting and design does not obstruct and views or vistas.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development

site and maintained to residential properties.

Comment:

It is considered that a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. Suitable conditions included under the discussion in Part C1.5 of this report ensure visual privacy is protected for surrounding occupants.

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

Comment:

The proposed secondary dwelling does not alter the streetscape appearance, as works are entirely located in the rear yard. The proposed landscape treatment, as amended via conditions, protects the ongoing viability of significant on-site vegetation including spotted gums. This will ensure that a high quality landscape outcome is achieved for the site.

Flexibility in the siting of buildings and access.

Comment:

The proposed development allows for suitable flexibility in siting of buildings without resulting in any unreasonable impacts. Access is also maintained around the building and to the site.

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

Comment:

The proposal is supported by a suitable arboricultural report, and the application has been reviewed by Council's Landscape and Biodiversity Officers, who are supportive of the proposal, subject to conditions of consent.

A landscaped buffer between commercial and residential zones is achieved.

Comment:

Not applicable. The subject site does not adjoin commercial land.

Conclusion

Having regard to the above assessment, it is concluded that the outcomes of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The control prescribes a requirement of 60% (633.6sqm) landscaped area on land mapped as environmentally sensitive. The proposal results in a minor non-compliance of 56.5% (596.6sqm).

Provided the outcomes of this control are achieved, areas provided as impervious landscape treatments of up to 6% of the total site area may be permitted, which increases the total landscaped area to 659.96sqm (62.5%).

The underlying outcomes of the control are therefore addressed as follows:

Merit Consideration

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

Comment:

The proposed development is consistent with Clause A4.1 Avalon Beach Locality of the Pittwater 21 DCP, which details the desired future character of the site's locality.

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

Comment:

As discussed earlier within this report, it is considered that the bulk and scale of the built form has been appropriately minimised.

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

Comment:

As discussed earlier within this report, the proposal will ensure that a reasonable level of amenity and solar access is provided within the site and maintained on adjoining properties.

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

Comment:

Native landscape treatment will be provided on the site and amended via condition, which will assist in visually reducing the built form. Furthermore, the proposal does not result in the removal of significant canopy trees.

- *Conservation of natural vegetation and biodiversity.*

Comment:

It is considered that no native vegetation or wildlife species will adversely be affected by the proposed works. Council's Landscape and Biodiversity Officers have reviewed the application and raised no objection to approval, subject to conditions.

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

Comment:

The proposed development retains significant areas of soft landscaping, thereby assisting with prevention of runoff, soil erosion, and siltation.

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

Comment:

The development will maintain the bushland character of the area given the modest size of the secondary dwelling and the established landscaping within the site that is to be retained.

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

Comment:

Suitable conditions have been included with this consent to ensure that stormwater is adequately managed on the site. Furthermore, there is sufficient soft landscaping on the site to assist in water infiltration, thereby decreasing stormwater runoff.

Conclusion

Having regard to the above assessment, it is concluded that the outcomes of the control are achieved. Therefore, the application is supported on merit 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 \$4,270 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$427,000.

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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

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

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

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

The proposal seeks alterations and additions to a dwelling house that involves a variation of up to 11.41% with regard to the Height of Buildings development standard.

The departure from the development standard has been addressed against the objectives of the C4 Environmental Living zone and Clause 4.6 PLEP 2014 to ensure no unreasonable impacts on surrounding land. In addition, numerical non-compliances in relation to the rear building line and landscaped area of the site have been deemed suitable following a merit assessment.

Suitable conditions to minimise impacts upon on-site native vegetation have been included by Council's Landscape and Biodiversity Officers, whilst Council's Development Engineer has included conditions in relation to the proposed works within the public road reserve. Visual privacy conditions have also been included to protect surrounding amenity.

In conclusion, the principal issues in the assessment have been addressed and the building height variation is supported pursuant to the Pittwater LEP 2014 and subject to conditions, whilst the alterations and additions will not create any unreasonable amenity impacts pursuant to P21 DCP 2014. 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 DA2021/1450 for Alterations and additions to a dwelling house including a secondary dwelling on land at Lot 55 DP

13291, 117 Hudson Parade, CLAREVILLE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA00 (F) - Site Plan	13 October 2021	BAA Studio
DA01 (G) - Primary Dwelling Garage/External Works Plan	13 October 2021	BAA Studio
DA02 (F) - Primary Dwelling First Floor Plan	13 October 2021	BAA Studio
DA03 (F) - Primary Dwelling Second Floor Plan	13 October 2021	BAA Studio
DA05 (F) - Primary Dwelling North-West Elevation	11 October 2021	BAA Studio
DA06 (E) - Primary Dwelling South-West Elevation	11 October 2021	BAA Studio
DA07 (E) - Primary Dwelling North-East Elevation & Door Schedule	11 October 2021	BAA Studio
DA08 (L) - Secondary Dwelling Floor Plan	25 November 2021	BAA Studio
DA10 (H) - Secondary Dwelling Elevations	25 November 2021	BAA Studio
DA11 (I) - Secondary Dwelling Elevations	25 November 2021	BAA Studio
DA12 (E) - Secondary Dwelling Detail Section	24 May 2021	BAA Studio
DA17 (B) - Primary Dwelling Section	19 October 2021	BAA Studio
Schedule of Finishes	Undated	BAA Studio

Engineering Plans		
Drawing No.	Dated	Prepared By
STW-01 (3) Stormwater Concept Plan	11 October 2021	BAA Studio/RPS Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (1210412S)	22 July 2021	Credwell Energy
NatHERS Certificate (0006273726)	22 July 2021	BAA Studio
Geotechnical Assessment (E25046.G02)	24 August 2021	eiaustralia

Arbor Impact Assessment	19 November 2021	Smart Arbor Professional Consulting
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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	12 July 2021	Roger Ornek

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 sewer 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 \$4,270.00 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 \$427,000.00.

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. Amendment to Secondary Dwelling, and associated Decking and Stairs

The secondary dwelling building face shall be a minimum of 2400mm from the outer trunk of existing tree number 4 - Spotted Gum, and the roof shall be a minimum of 2200mm from tree number 4 - Spotted Gum.

The secondary dwelling decking and stairs shall be realigned accordingly to be setback from tree number 4 - Spotted Gum at a distance as advised by a Project Arborist with AQF level 5 qualifications.

Reason: tree protection

7. Pier Footing Design Near Trees to be Retained

Pier footing structural layout plans for the external works including the decking and stairs to the secondary dwelling in vicinity of existing tree numbers 3 and 4 - Spotted Gums shall be developed in coordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture and a qualified Structural Engineer, to satisfy the recommendations in the Arboricultural Impact Assessment under section 7. Discussion and section 8. Recommendations.

The Arborist shall review, comment, recommend design revision as required and approve the pier footing layout to ensure the locations of piers will be manageable in terms of tree protection measures.

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

Reason: tree protection.

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 prepared by EI Australia dated 24/8/2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **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.

10. **Traffic Management and Control**

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

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

11. **Amendments to the approved plans**

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

- A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost north-eastern edge of the deck located off the secondary dwelling kitchen as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- The material of W01 is to be changed from clear to an obscured (frosted) material up to a height of 1.5m above finished floor level, or alternatively, the sill height of W01 shall be amended to a minimum sill height of 1.5m when measured from the finished floor level of the lower floor level of the secondary dwelling. This may result in amending the size of W01 or W02 above which would be acceptable to ensure the sill height is increased.

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.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site

stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by RPS Design Pty Ltd, drawing number STW-01, dated 11/10/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

13. **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 vehicular crossing and retaining walls which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer.

The design must include the following information:

1. A vehicular crossing 3 meters wide at the kerb and 3.5m wide at the boundary should be constructed in accordance with Council's standard drawing A4/3330/6 MH.
2. Structural details for any retaining walls within the road reserve.
3. Sight distances are to be in accordance with AS/NZS 2890.1:2004.
4. Details of the demolition of the existing driveway crossover and reinstatement of the road reserve including any proposed retaining walls.

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.

14. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

15. **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.

16. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Project Arborist**

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

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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

- i) tree protection measures and construction advice for existing tree numbers 1, 2, 3, 4, 5, 6, and 7 - all Spotted Gums, and tree number 7 - Grey Ironbark, as outlined in section 7. Discussions and section 8. Recommendations.

All tree protection measures specified must:

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

The Project Arborist shall provide certification to the Certifying Authority that all

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

Note:

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

Reason: tree protection.

18. **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.

19. **Works on Land Owned or Managed By Council**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
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.

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.

21. **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.

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

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

Reason: Public safety, landscape amenity and tree protection.

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

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

Reason: Public safety and environmental protection.

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

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

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

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

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

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

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

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

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

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

26. **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. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

28. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection

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

Reason: Public Safety.

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

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

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

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

Reason: tree protection.

30. **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.

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

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) are to be imported on to the site prior to or during construction works.

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

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

32. **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.

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

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

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 the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

34. **Retaining wall in the Road Reserve**

The retaining wall works in the road reserve shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

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

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

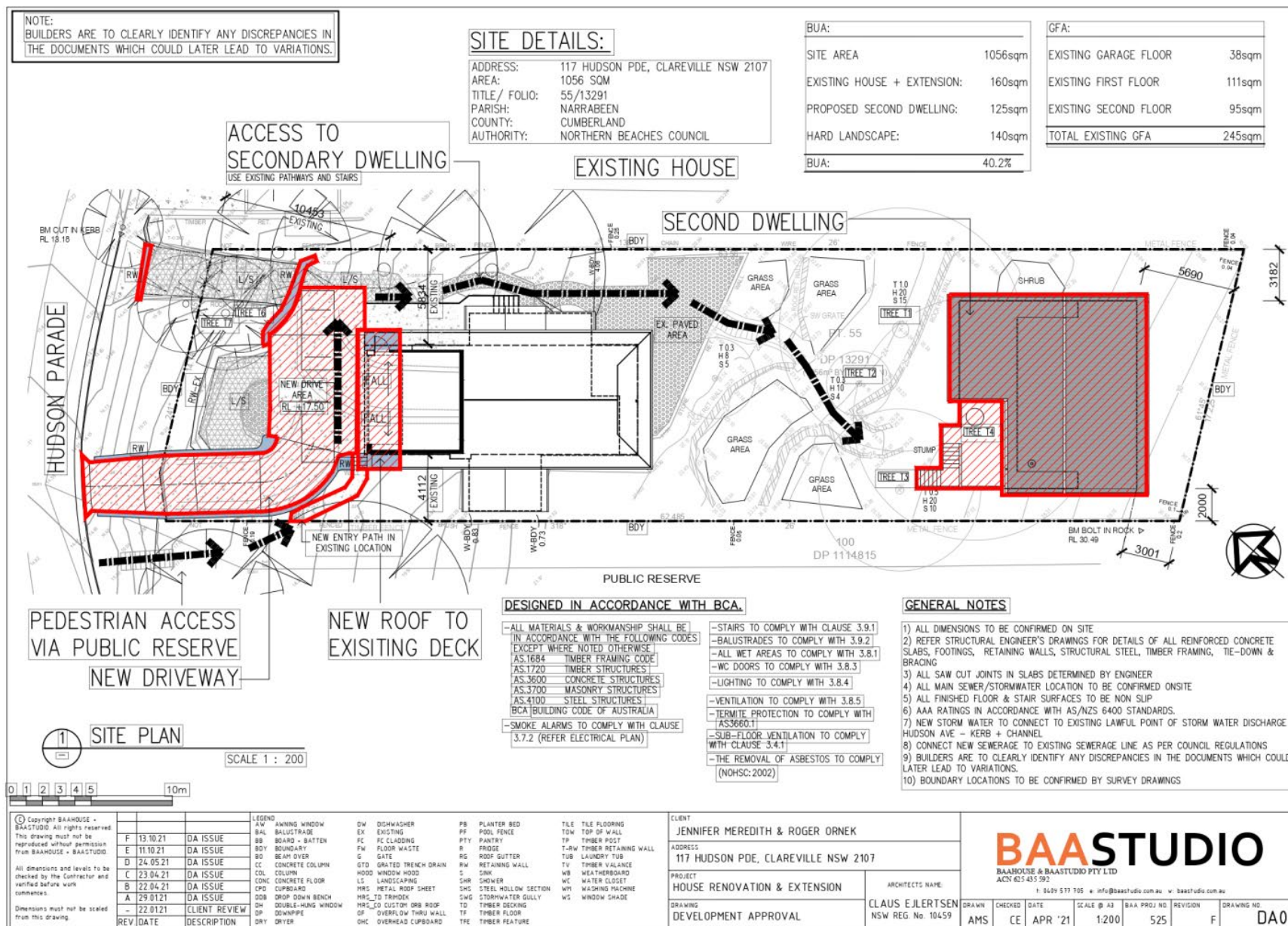
Reason: To ensure geotechnical risk is mitigated appropriately.

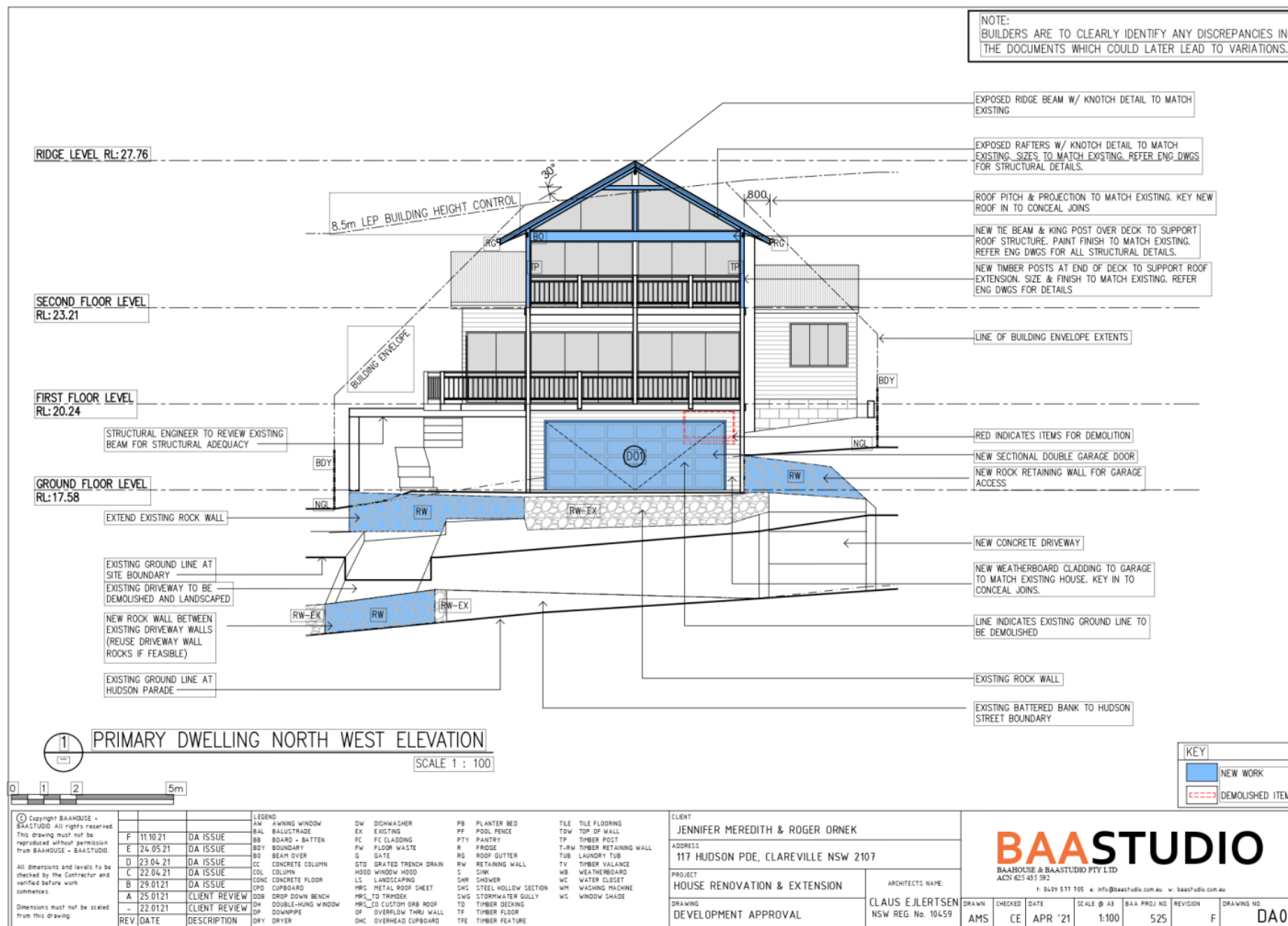
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

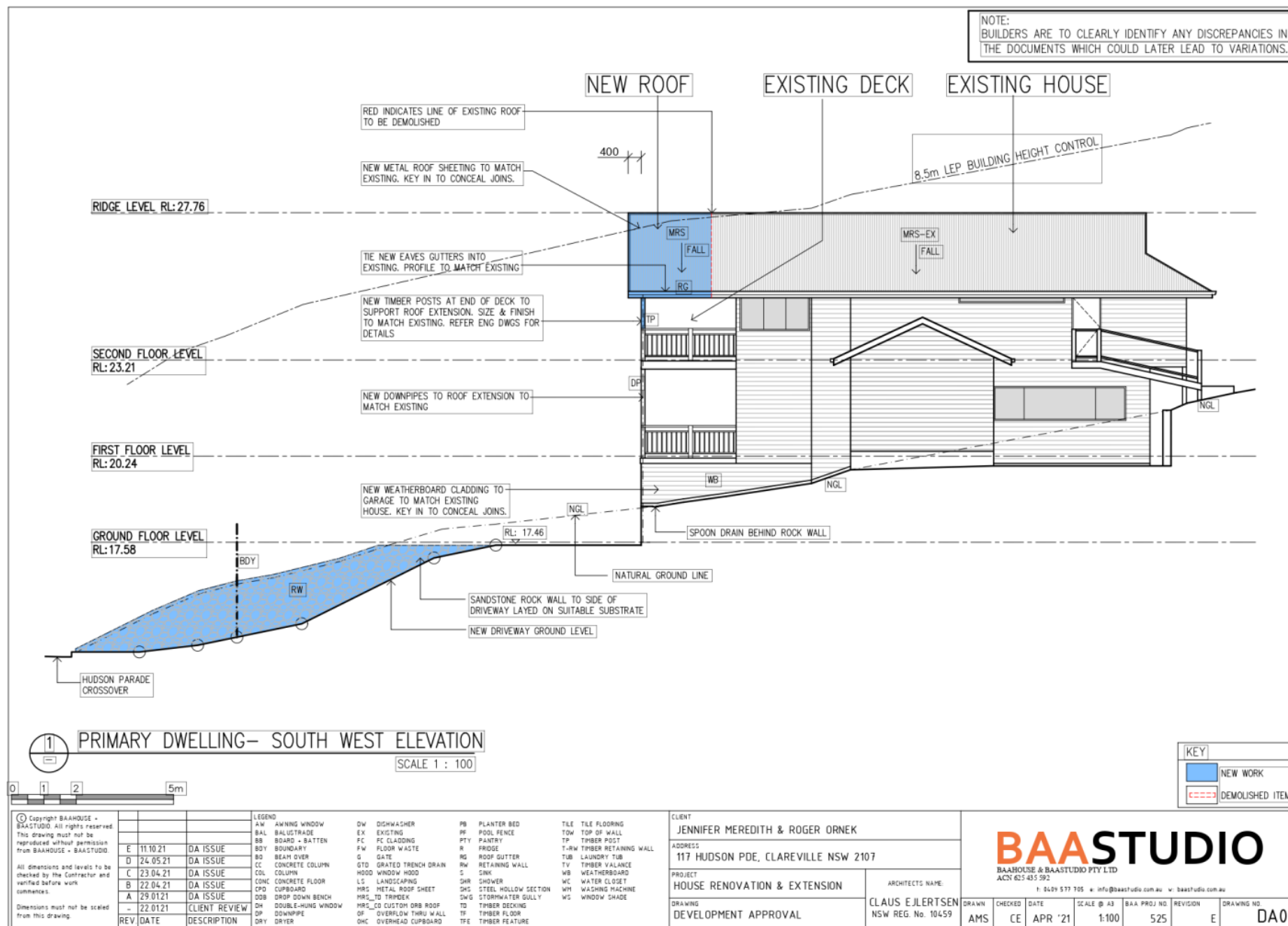
36. **Protection of Habitat Features**

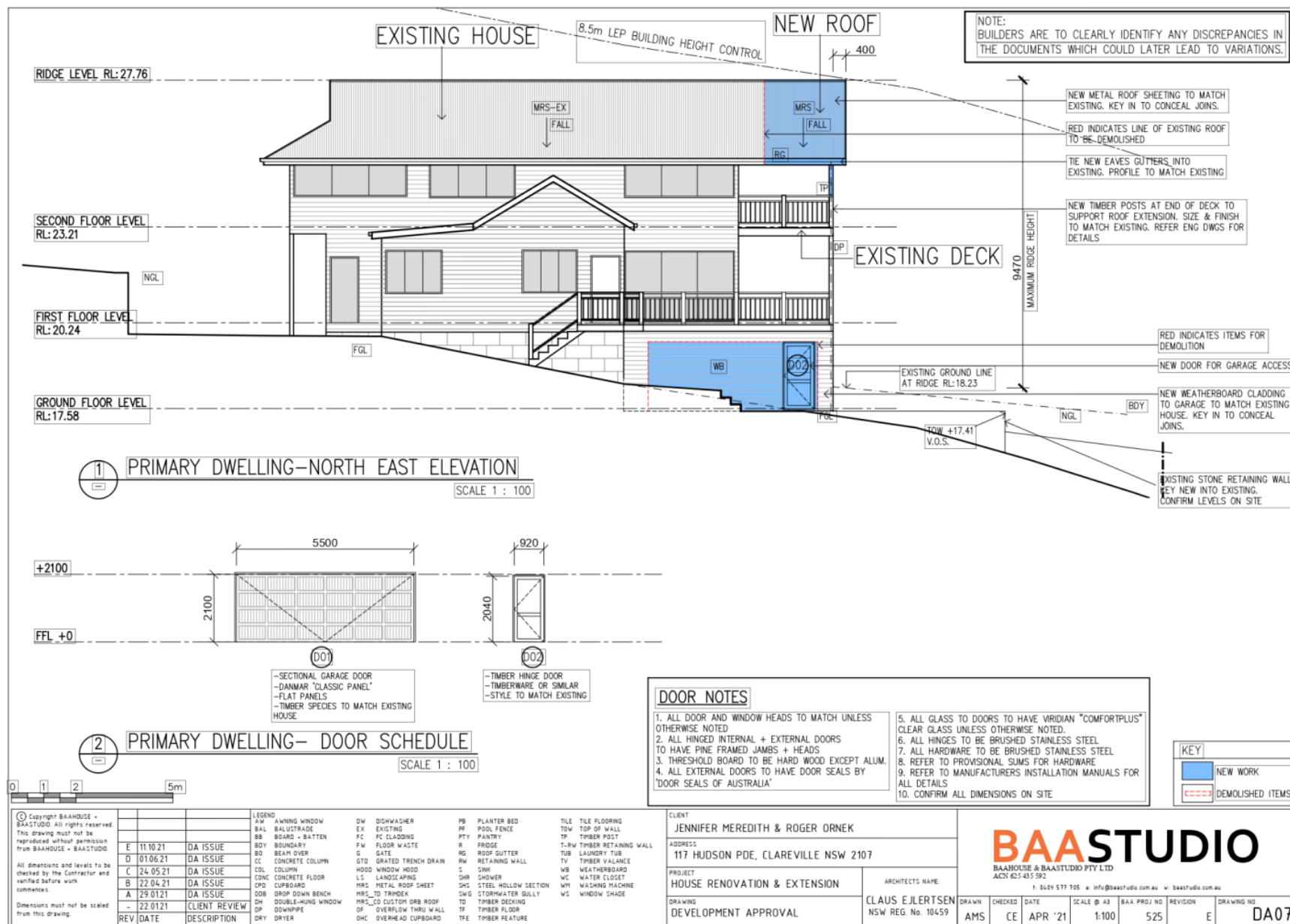
All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

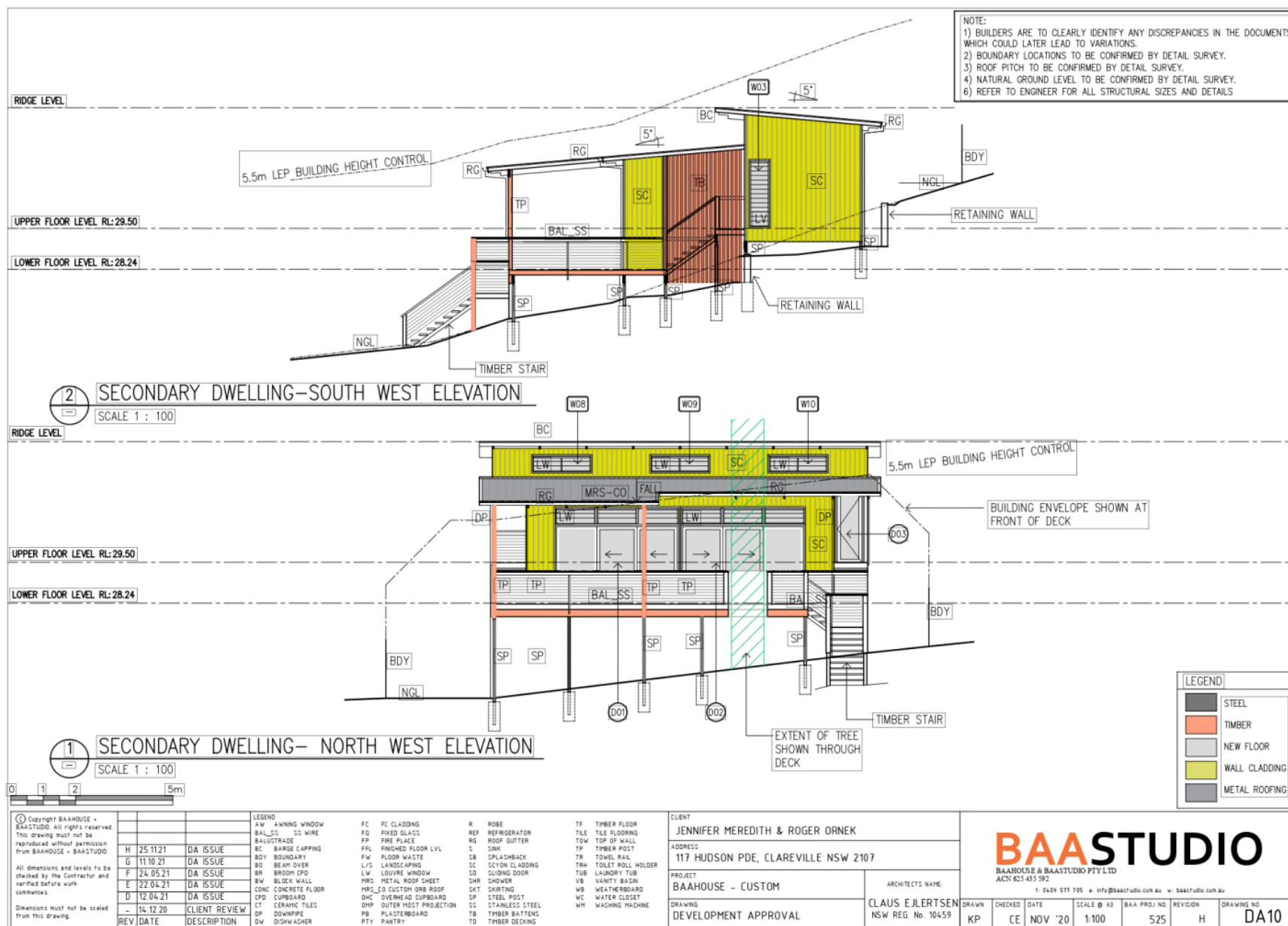
Reason: To protect wildlife habitat.

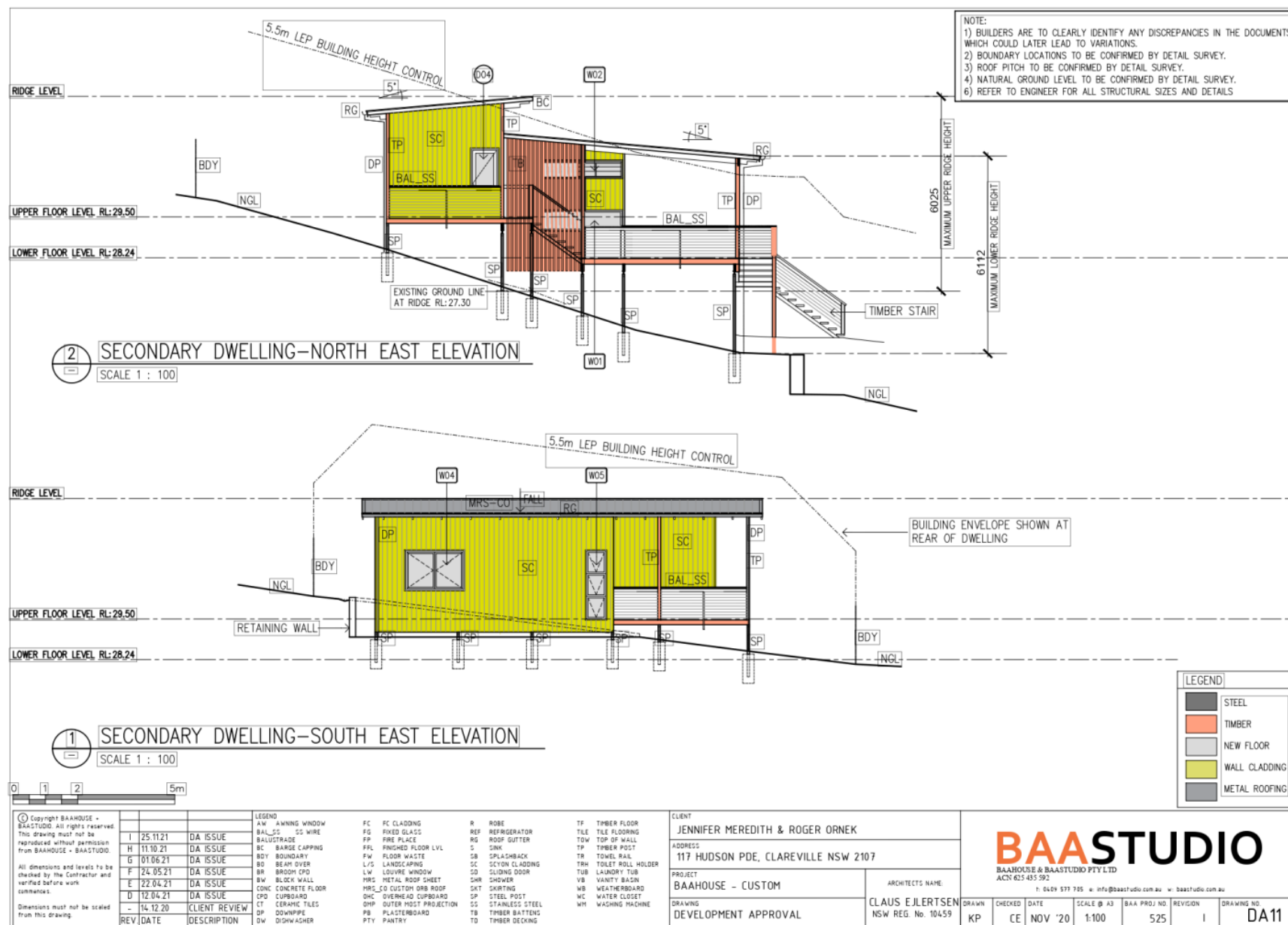












APPENDIX 1**Clause 4.6 Exceptions to Development Standards – Height of Buildings****117 Hudson Parade, Clareville**

Clause 4.6 of the Pittwater Local Environmental Plan 2014 permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

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



The aims and objectives of the Pittwater LEP 2014 Clause 4.6 are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Under Clause 4.6(3) and (4) of LEP 2014, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

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

1. Environmental Planning Instrument Details

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

Pittwater Local Environmental Plan 2014

1.2 What is the zoning of the land?

E4 – Environmental Living

1.3 What are the objectives of the zone?

- *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*

1.4 What is the development standard being varied?

Cl 4.3 - Height of Buildings

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

Cl. 4.3 of the Pittwater Local Environmental Plan 2014

1.6 What are the objectives of the development standard?

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

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

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

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

The numeric value of the height of buildings development standard applicable to a secondary dwelling on subject site is a maximum of 5.5m.

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

The development proposes a maximum building height of 9.541 metres for the principal dwelling and 6.025 metres for the secondary dwelling.

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

The percentage variation sought is 12.24% for the principal dwelling and 9.54% for the secondary dwelling.



NSW Land and Environment Court Case Law

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

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

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

The five ways outlined in *Wehbe* include:

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

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

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

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



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

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

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

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

4 Zhang v City of Ryde

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

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

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

The Commissioner applied the now familiar approach to determining consistency with zone



objectives by considering whether the development was antipathetic to the objectives.

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

5. Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

3. Consideration

The following section addresses the provisions of clause 4.6 of LEP 2014 together with principles established in the NSW Land and Environment Court Case Law outlined above.

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

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

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - Wehbe v Pittwater

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

The objectives of the standard are:

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

Comment

The variation increase is proposed primarily to allow for sun shading on the site. The principal dwelling proposes the extension of the existing roof ridge over the existing deck. The extension of the existing form will provide the most architecturally pleasing result. The development will be a positive contribution to the streetscape and appear very similar to its existing form.



The secondary dwelling proposes a variation only to allow for the complete roof form, where the site drops away. This will not be visible from the street or easily visible from any other location.

It is therefore considered this objective is met, despite the numerical variation.

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

The subject site is surrounded by detached one and two storey dwellings, set on large lots with significant landscaping and native vegetation. The proposed development remains compatible with the height and scale of surrounding development, as the height variations proposed result due to the fall of the land and are consistent with the surrounds.

The resulting dwelling and secondary dwelling are considered to be compatible with the prevailing height of buildings and streetscape character within the locality, despite the non-compliance and presents well to Hudson Parade. It is considered this objective is met, despite the numerical variations.

(c) to minimise any overshadowing of neighbouring properties,

The proposed variations to height do not result in any unreasonable solar access impacts to adjoining properties. Given that compliant solar access is achieved, despite the height variation sought, it is considered the underlying objective of this clause has been satisfied.

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

A site visit has been undertaken and it is considered the proposed development will have no impact on views from the subject site or adjoining properties.

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

The proposed works are located within the existing building footprint at the front of the site and step with the site at the rear. They do not alter the topography of the site.

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

The proposed development is compatible with the residential surrounds and is an appropriate redevelopment of the existing dwelling. The design, colours and materials will not impact on the natural environment and no trees are proposed for removal. The subject site is not a heritage item, is not located in a heritage conservation area and is not located in proximity to a heritage item.



- 2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

- 3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason.

- 4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

- 5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The variations are very minor in area and applies to a very small component at the buildings.
- The variations result due to the site topography
- The scale of dwellings on the streetscape are similar and the reason for the original



variation was the siting of the existing structure and the fall of the land.

- As such, the varied building height is considered to be reasonable and is consistent with clause 1.3(c), (d) and (g).

Future Development

- The built form proposed is consistent with other buildings in the locality,
- Amendments to achieve compliance would result in an architecturally less pleasing result with no gain for the site, or neighbours or the streetscape.
- The refurbishment and alterations proposed demonstrates fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for the shading of an existing residential dwelling, of a bulk and scale consistent with the locality. Compliance with the building height standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The development does not require the removal of any trees and complies with Council DCP landscape area controls.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the building height will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. All services are existing, satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The works proposed will not result in an overdevelopment of the site and satisfies the objectives of the zone and the objectives of the development standard, as detailed within this report,
- The variation does not result in a dwelling with excessive bulk.
- The variation will have no unreasonable amenity impacts to neighbours and the surrounds.



The variation to the building height and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and largely presents with a compliant height and by supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the building height variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – E4 Environmental Living

Objectives of zone

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

Consistent. The proposal is for alterations and additions to an existing dwelling and addition of a secondary dwelling and will provide additional shade on an existing deck, within the footprint of the existing dwelling and architecturally pleasing design.

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

Consistent. The development will have no impact on any special ecological, scientific or aesthetic values.

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

Consistent. The development retains the existing single dwelling density. The proposed height remains below the canopy in the locality and is consistent with surrounding dwellings.

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



Consistent. There will be no impact on riparian and foreshore vegetation and wildlife corridors.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it represents a minor exceedance and is consistent with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,



(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Strict numerical compliance with the 8.5 metres and 5.5 metre height development standards would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development for alterations and additions to an existing dwelling on land zoned E4 – Environmental Living is appropriate and reasonable for the following reasons:

- The variation is for a very small component of the structures,
- The proposed variation will allow for improved shading and amenity onsite,
- The built form proposed is consistent with other buildings in the locality,
- Amendments to achieve compliance would result in an architecturally less pleasing result with no gain for the site, neighbours or the streetscape.
- The objectives of the E4 zone can be met despite the numerical variation,
- There will be no unreasonable amenity or environmental impacts as a result of the non-compliance.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control, despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variations.



The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.1, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.3	DA2021/2087 - 156 WHALE BEACH ROAD, WHALE BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Tony Collier
TRIM FILE REF	2021/852316
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 DA2021/2087 for Alterations and additions to a dwelling house on land at Lot B DP 355059, 156 Whale Beach Road, Whale Beach, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2087
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot B DP 355059, 156 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Simon Anderson Rothery Alison Jane Rothery
Applicant:	Susan Rothwell Architects
Application Lodged:	16/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	22/11/2021 to 06/12/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 13.6%
Recommendation:	Approval
Estimated Cost of Works:	\$ 29,150.00

EXECUTIVE SUMMARY

The proposal is for the addition of a steel framed retractable pergola over an existing first floor terrace. The works result in a variation to the Height of Buildings development standard of the Pittwater Local Environment Plan 2014 (PLEP 2014) of 12.9%. Despite the numeric non-compliance, the proposal is not considered to result in unreasonable bulk, scale or unreasonable amenity impacts to the adjoining or surrounding properties.

The proposed development also results in technical non-compliance with the Building Envelope under the Pittwater 21 Development Control Plan (P21DCP). However, this non-compliance does not result in adverse amenity impacts and is consistent with the objectives of the control and are therefore supported.

The application was originally lodged as a modification (MOD2021/0490) to Development Consent DA2020/1080. The application was requested to be withdrawn and relodged as a Development Application as the pergola exceeded the building height requirement of the PLEP 2014 and did not meet the requirements of a modification.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks approval for alterations and additions to an existing dwelling with the construction of a steel framed retractable pergola over the existing first floor terrace.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D12.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot B DP 355059 , 156 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	subject site consists of one allotment located on the south-western side of Whale Beach Road.

The site is irregular in shape with a frontage of 4.3m along Whale Beach Road and a depth of 96m. Vehicular access is gained via a right of carriage way to the rear of the property via Beauty Drive.

The site has a surveyed area of 1181m².

The site is located within the C4 Environmental Living zone and accommodates a existing two to three storey dwelling house that is currently under construction.

The site contains a variety of hedging along the side boundaries.

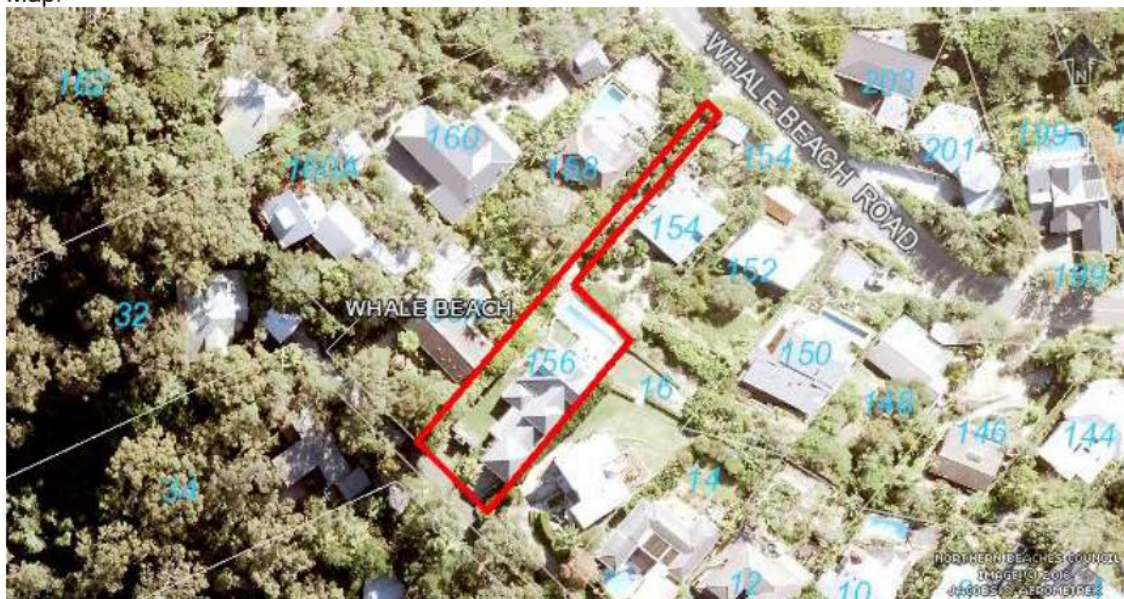
Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar two to three storey residential dwelling houses.

Site Inspection

A site inspection was conducted during the assessment of MOD2021/0490 on 27 August 2021.

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 - N0385/09

Alterations and additions to the existing dwelling with a new swimming pool, determined 10/05/2010.

Modification Application - N0385/09/S96/1

Modification of development consent N0385 for the alterations and additions to the existing dwelling with a new swimming pool, determined 05/04/2013.

Development Application - DA2020/1080

Alterations and additions to a Dwelling House, approved by the Development Determination Panel 12/11/2020.

Modification Application - Mod2021/0490

Section 4.55 (2) Environmental Impact - Modification of Development Consent DA2020/1080 granted for alterations and additions to a Dwelling House, withdrawn.

The application was withdrawn after the Development Determination Panel was unable to support the proposal as the pergola exceeded the building height requirement of the PLEP 2014 and did not meet the requirements of a modification.

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)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent

Section 4.15 Matters for Consideration	Comments
	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.
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

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 22/11/2021 to 06/12/2021 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

External Referral Body	Comments
	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 (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.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.66m	13.6% (+1.16m)	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
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.66m
Percentage variation to requirement:	13.6%

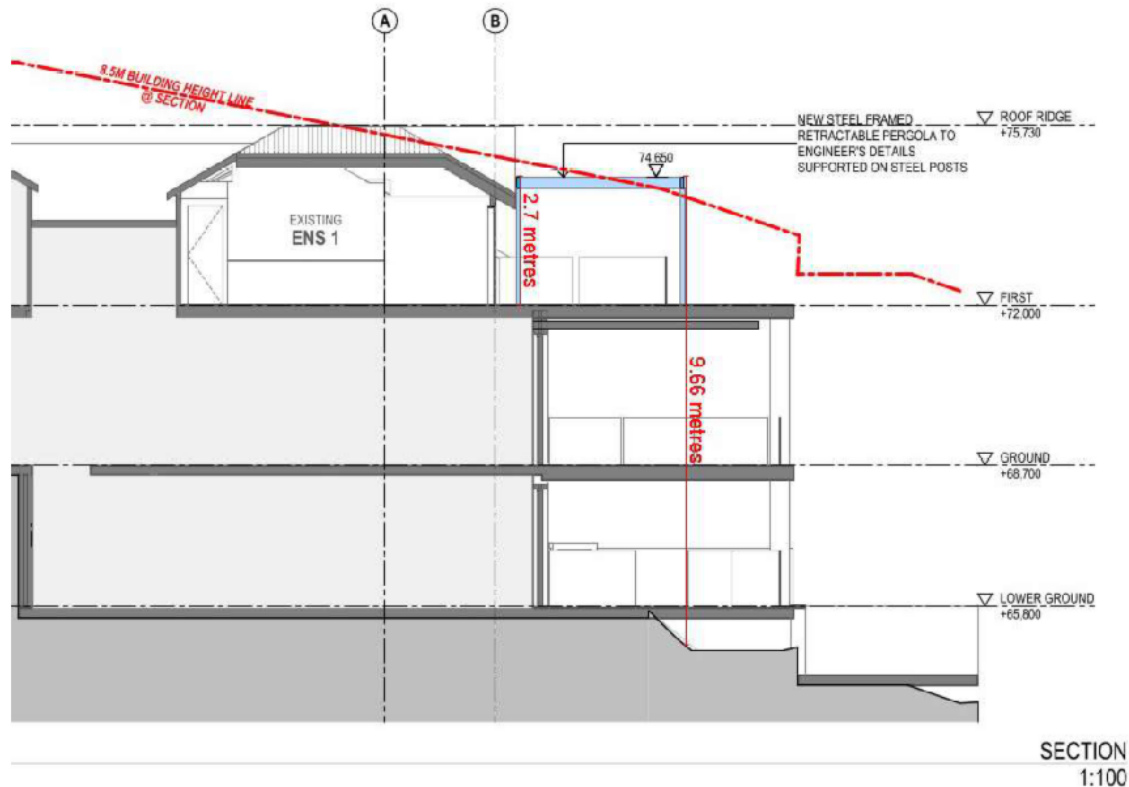


Image 1: Building height non-compliance

Assessment of request to vary a development standard

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The non-compliance with the height control to the pergola over the first floor terrace arises as a result of the site's sloping topography.
- The proposed pergola sits below the maximum height of the existing building, which will remain unchanged.
- 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.
- The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The proposal includes the retention of the existing dwelling roof, and the addition of a pergola over the first floor terrace. The proposed pergola sits below the height of the approved roof form, which will remain unchanged with an RL of 74.65. The proposed pergola is an open structure that has minimal bulk and scale. The proposal will maintain the existing character of the locality and will not result in any adverse amenity impacts on adjoining and surrounding properties

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 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:

The proposed development is generally consistent with the approved dwelling and maintains the desired character of the locality.

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

Comment:

The proposed modification results in a reduction to the height and scale of the approved development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed change to the approved roof will result in a small increase in overshadowing of neighbouring properties, however, the degree of overshadowing complies with the requirements of the PDCP.

d) to allow for the reasonable sharing of views,

Comment:

The proposed pergola will not result in any unreasonable view impacts.

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

Comment:

The modifications within the building footprint and responds respond sensitively to the natural topography.

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

Comment:

The proposed modification is a open structure that has minimal visual impact of the development.

(2) The objectives of the C4 Environmental Living zone are as follows:

a) To provide for low-impact residential development in areas with special ecological,

Comment:

_____The proposed modifications relate to alterations and additions to an existing dwelling.

b) To ensure that residential development does not have an adverse effect on the

Comment:

_____The proposed works are generally minor and will not have an adverse impact on the above val

c) To provide for residential development of a low density and scale integrated w

Comment:

_____The development is of an appropriate scale and density, and the changes to the upper floor re

d) To encourage development that retains and enhances riparian and foreshore v

Comment:

_____The proposed works will not unreasonably impact riparian and foreshore vegetation or wildlife

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 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Rear building line	6.5m	Unaltered	Yes
Side building line	NW - 2.5m	Unaltered	Yes
	SE - 1m	Unaltered	Yes
Building envelope	NW - 3.5m	Within envelope	Yes
	SE - 3.5m	Outside envelope	No
Landscaped area	50%	Unaltered	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.3 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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D12.8 Building envelope

Description of Non-Compliance

The proposed pergola does not meet the side boundary envelope requirements on the southern elevation. It should be noted that the existing dwelling does not comply with the side boundary envelope.

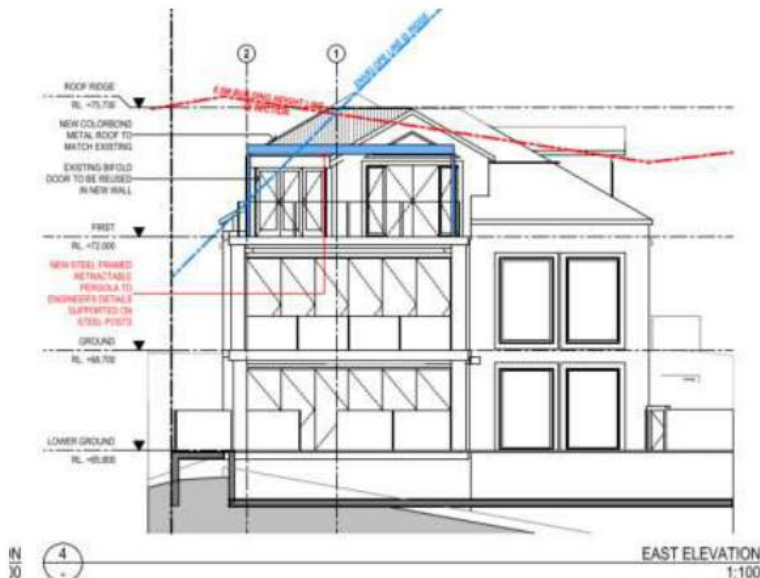


Image 2: Side Boundary Envelope Encroachment - East Elevation

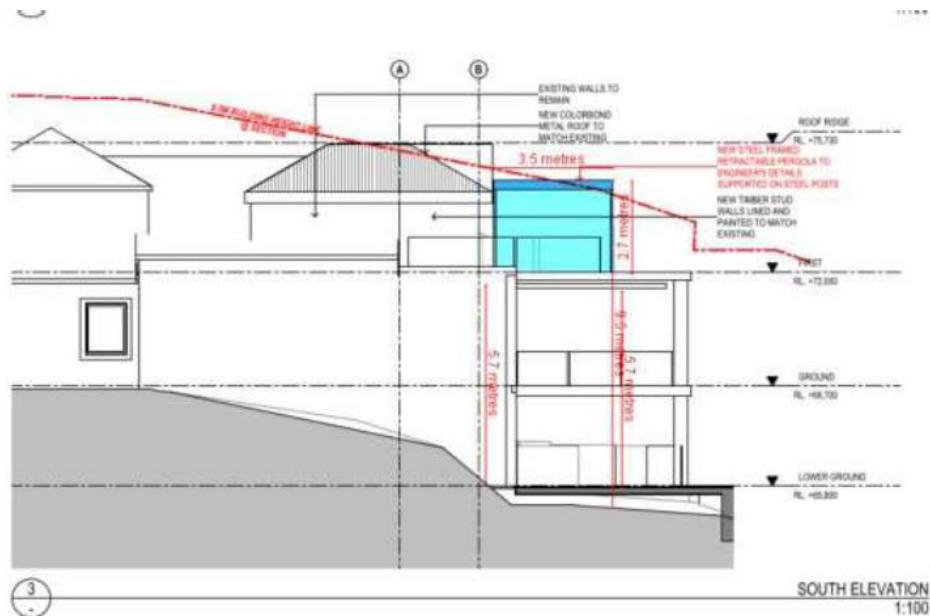


Image 3: Side Boundary Envelope Encroachment - South Elevation

Merit Assessment

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

underlying Objectives of the Control as follows:

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

Comment:

The proposal will maintain the desired future character of the Palm Beach locality.

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

Comment:

When viewed from the right of way, the proposal will be viewed as being two storey. From Whale Beach Road the dwelling is sited at a great distance being a rear allotment of a battleaxe block arrangement. The proposed pergola is an open structure, that will sit well below that of the approved roof form and is of a scale that is consistent with the natural environment.

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

Comment:

The proposed pergola is a open structure that will not adversely affect the existing streetscape and is consistent with the existing built form. The proposal appropriately relates to the spatial characteristics of the existing dwelling, nearby dwelling and the natural environment.

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

Comment:

The proposal is a open pergola over an existing first floor terrace. The open nature of the pergola has minimal bulk and scale.

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

Comment:

Views to and from public and private places will not be impacted by the proposal.

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

Comment:

The proposal maintains a reasonable level of privacy, amenity, and solar access to the residents of the subject site and the residents of the adjoining properties.

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

Comment:

No vegetation or landscaping is proposed for removal as part of this application.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environment Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Building 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, as addressed within this assessment report, the proposed development does not comply with Clause 4.3 Height of Buildings and a formal request via Clause 4.6 Exceptions to Development Standard was lodged by the applicant and assessed. The accompanying Clause 4.6 written request was considered acceptable in this instance in regard to the development considered to be consistent with the height, bulk and scale of surrounding development within the locality.

The proposal also includes a variation to clause D12.8 Building Envelope of P21 DCP. This non-compliance has been assessed and considered acceptable in this instance.

The proposal does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the PLEP 2014 and P21 DCP. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Therefore, the application is recommended for approval.

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

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 DA2021/2087 for Alterations and additions to a dwelling house on land at Lot B DP 355059, 156 Whale Beach Road, WHALE BEACH, subject to the conditions printed below:

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

DA100 - Issue A	28/10/21	Susan Rothwell Architects
DA101 - Issue A	28/10/21	Susan Rothwell Architects

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

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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
DA1002 - Issue A	28/10/21	Susan Rothwell Architects
DA1003 - Issue A	28/10/21	Susan Rothwell 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. Prescribed Conditions

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

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

- (ii) in the case of work to be done by an owner-builder:
- A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until

the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. 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****5. 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**6. 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.

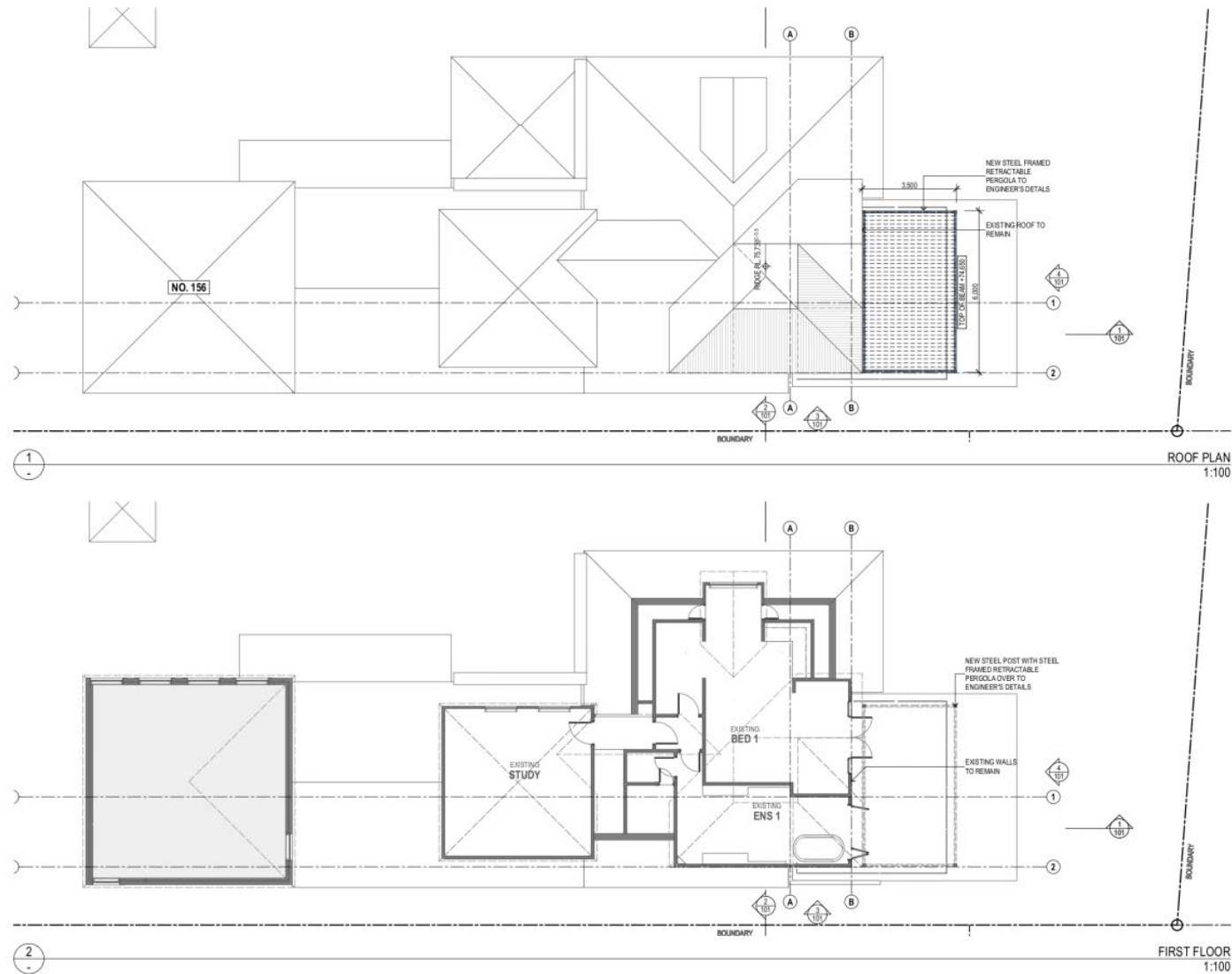
Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**7. Pergola is not to be enclosed**

The Pergola cannot be enclosed and is to remain an open structure at all times.

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



SUSAN ROTHWELL
ARCHITECTS

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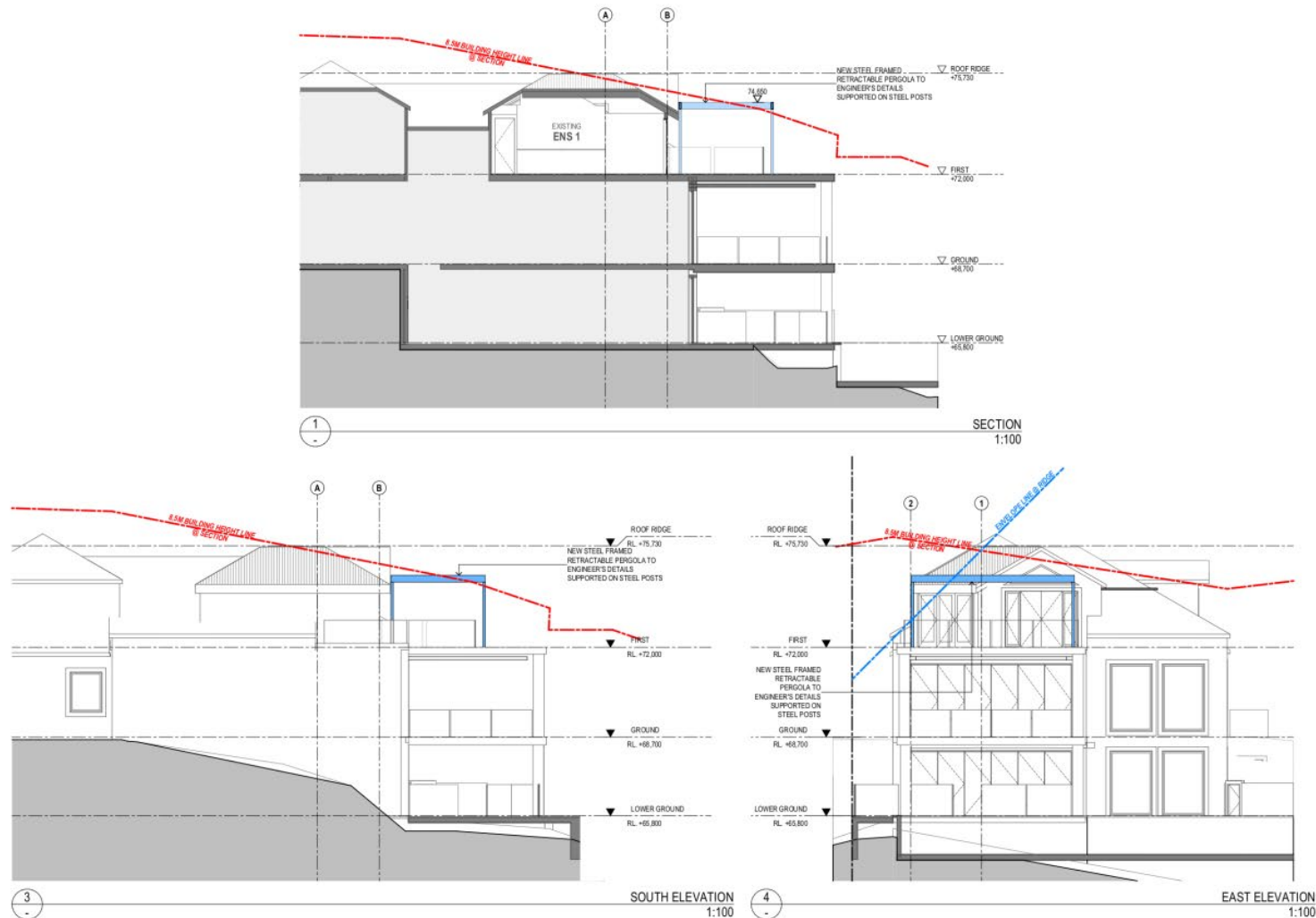


ALTERATIONS AND
ADDITIONS
AT 156 WHALE BEACH RD,
WHALE BEACH
LOT B / DP 355059
FOR ALISON ROTHERY

ISSUE
A FOR DA SUBMISSION
(15/02/21)

PLANS

SCALE	1:100@A2
DATE	28/10/21
JOB NO.	SRWBRZ
DWG. NO.	DA100
ISSUE	A



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**ALTERATIONS AND ADDITIONS
AT 156 WHALE BEACH RD, WHALE BEACH
LOT B / DP 355059
FOR ALISON ROTHERY**

A. FOR DA SUBMISSION
(10/21)

SECTIONS AND ELEVATIONS

SCALE:
DATE:

1:100 (A2)
28/10/21

PROJECT
SRWBR2

DWG NO.
DA101

ISSUE
A

Vaughan Milligan Development Consulting Pty Ltd

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

156 WHALE BEACH ROAD, WHALE BEACH

FOR PROPOSED ADDITIONS & ALTERATIONS TO AN EXISTING DWELLING

For: For proposed additions and alterations to an existing dwelling
At: 156 Whale Beach Road, Whale Beach
Owner: Alison Rothery
Applicant: Susan Rothwell Architects

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 4.3 restricts the height of a building in this locality to a maximum of 8.5m.

The proposed additions and alterations to the existing dwelling comprise the provision of a new steel framed retractable pergola over the existing open terrace adjoining the eastern façade of the first floor bedroom. The proposed pergola will provide a height of up to 8.9m above natural ground level and exceed Council's maximum building height of 8.5m by 0.4m or 4.7%. The extent of the building's roof which exceeds the 8.5m height control is detailed in Figure 1 (over page).

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is clause 4.3 of PLEP 2014 a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act in standards fixed respect of an aspect of the development includes:

"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,"

- (b) Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

Vaughan Milligan Development Consulting Pty Ltd

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been considered in this request for a variation to the development standard.

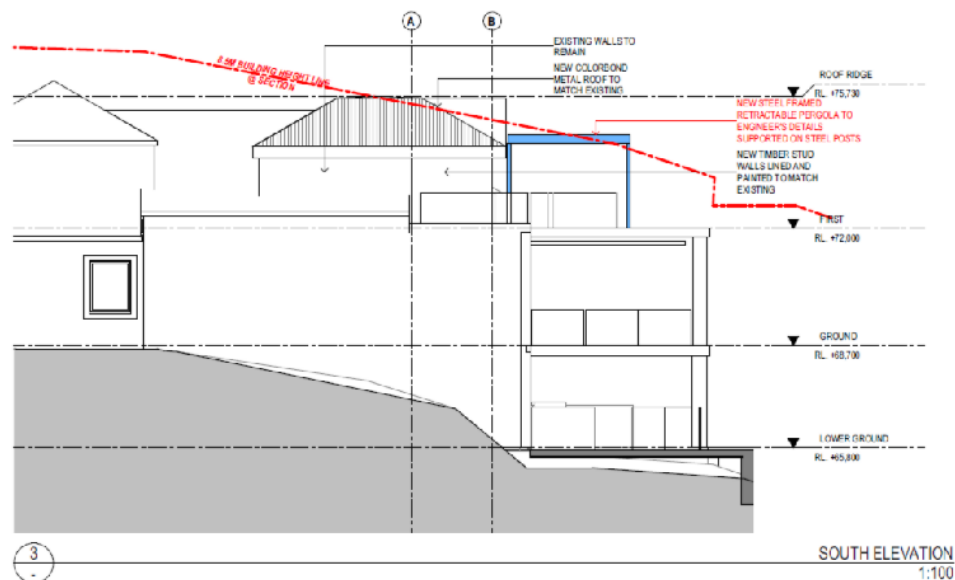


Fig 1: Section extract to indicate area of dwelling roof exceeding the 8.5m height control

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4.0 Objectives of Clause 4.6

Clause 4.6(1) of PLEP provides:

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

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

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

Clause 4.3 (the Maximum Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the PLEP.

Clause 4.6(3) of PLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development*

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standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Whale Beach. The additions to the existing dwelling to provide for the open steel retractable pergola over the first floor terrace will result in a maximum building height for the new work of 8.9m, which exceeds the maximum height control by 0.4m or 4.7%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

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

(a) the consent authority is satisfied that:

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

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

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Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

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The proposal will provide for the provision of an open steel frame pergola over an existing open terrace which will provide for improved solar protection for the property owners when utilising the terrace and also to the internal living spaces. The provision of the new retractable steel pergola will provide for increased amenity for the site's occupants.

The non-compliance with the height control to the north-eastern extremity of the new pergola element over the first floor terrace roof arises as a result of the site's sloping topography and the form of the existing development. The maximum height of the existing building to the current ridge will be unchanged.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed new works will not see any unreasonable impacts on the views enjoyed by neighbouring properties.

Due to the north-easterly orientation of the site and as outlined in the shadow diagram information which support the application, the works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Whale Beach Road and the wider public view of the site, together with from the surrounding private properties, will be largely maintained.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in clause 4.3 of PLEP.
- 5.2 Clause 4.3 of PLEP specifies a maximum building height of 8.5m in this area of Whale Beach.
- 5.3 The proposed additions and alterations to the existing dwelling will have a maximum height of 8.9m, which exceeds the height control by 0.4m or 4.7%.

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6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:
17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only*

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one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is clause 4.3 of PLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
 3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the E4 Environmental Living zone?
 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of PLEP?

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7.0. Request for Variation

7.1 Is compliance with clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by two and three storey development.

The proposal seeks to accommodate the new works within a compatible building form, with the slope of the site towards the east resulting in a portion of the new steel framed retractable pergola over the existing first floor terrace being up to 8.9m in height.

The external form of the development follows the sloping topography of the site, which assists with minimising the visual bulk of the development.

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

The proposed height of the new works to enclose a portion of the first floor terrace will maintain a compatible height and scale with that of the surrounding development.

The proposed additions to the dwelling will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposal will not obscure any important landscape and townscape features beyond that which would be anticipated by the development of a residential dwelling, which is stepped to maintain a predominantly two storey height on the site.

Consistent with the decision of Roseth SC in *Project Ventures Developments v Pittwater Council* [2005] NSWLEC 191, it is my opinion that “*most observers would not find the proposed building offensive, jarring or unsympathetic*”.

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

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(c) to minimise any overshadowing of neighbouring properties,

The proposed works to partially enclose the existing first floor terrace present a modest increase in building height and bulk. The extent of the proposed overshadowing is reflected in the shadow diagrams prepared by Susan Rothwell Architects and which note that the minor increase in overshadowing does not materially affect the primary living spaces and outdoor areas of the adjacent neighbour to the south east.

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

The proposed new works are located at the first floor terrace level, with the primary views for the surrounding properties being more directed towards the north and across the face and the lower levels of the current dwelling. The opportunity for the adjacent neighbours to continue to retain suitable views across the site towards Whale Beach will be maintained.

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

The proposal involvement very minor changes to the existing building, comprising the provision of a steel framed retractable pergola over the existing first floor terrace. The primary outlook for the adjoining neighbours is retained, and the building will continue to present a compatible bulk and scale with the new works considered to respond sensitively to the natural topography.

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

The proposed works will not see any further site disturbance, or loss of landscaped area. The site does not join any sites of heritage significance and the proposal is considered to be reasonable in this portion of Whale Beach.

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7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed additions will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the surrounding character of Whale Beach Road which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new development is considered to promote good design and enhance the solar protection residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).

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- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides for the provision of a new open style retractable pergola which maintains views over and past the building for the surrounding properties, whilst improving the solar protection for the occupants and the thermal efficiency of the internal living spaces. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the E4 Environmental Living Zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the E4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the*

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aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone”.

In response to Nessdee, I have provided the following review of the zone objectives:

It is considered that notwithstanding the modest breach of the maximum building height by 400mm at the north-eastern extremity of the proposed new steel retractable pergola, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environment or Living Zone for the following reasons:

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

As found in Nessdee, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The proposal provides for modest alterations and additions which comprise the provision of a new steel frame retractable pergola over the existing first floor terrace in a manner which will retain the single dwelling character of the site and the immediate area.

The site and its location in Whale Beach Road is considered to be an area of special visual and aesthetic value.

The external form of the development is stepped with the sloping topography of the form, which will reduce the visual bulk of the development.

Further, the modulation of the front façade and side elevations at the upper level will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and will not be a visually prominent element in the area.

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

The design prepared by Susan Rothwell Architects has been prepared to meet the client brief, together with ensuring that the visual bulk and overall height of the dwelling is effectively managed.

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The design is considered to be an improvement in terms of the building's appearance and visual impact and for these reasons, the development does not result in an adverse impact on the special aesthetic values of the site.

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

The proposal provides for the inclusion of a steel frame retractable pergola over the existing first floor terrace.

As the design provides for an open style structure with a complementary colour palette, the building respects the predominant scale of development in the locality.

The setbacks are compatible with the existing surrounding development and the proposal does not have an adverse impact on long distance views.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of PLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

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8.0 Conclusion

This development proposes a departure from the maximum building height control, with the proposed new works to provide for a steel frame retractable pergola over the existing East facing first floor terrace which will have a height of up to 8.9m.

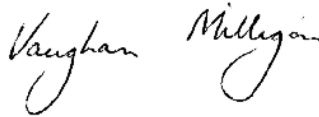
This variation occurs as a result of the sloping topography of the site and siting of existing development.

This objection to the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of PLEP 2014 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.4 **REV2021/0040 - 64 WOODLAND STREET, BALGOWLAH
HEIGHTS - REVIEW OF DETERMINATION OF APPLICATION
DA2020/1380 FOR ALTERATIONS AND ADDITIONS TO
DWELLING HOUSE**

REPORTING MANAGER **Tony Collier**
TRIM FILE REF **2021/850073**
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

- A. THAT Council as the consent authority **approves** Development Consent to REV2021/0040 for Review of Determination of Application DA2020/1380 for alterations and additions to dwelling house on land at Lot 5 DP 9928, 64 Woodland Street, Balgowlah Heights, subject to the conditions set out in the Assessment Report.
-

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0040
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 5 DP 9928, 64 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Review of Determination of Application DA2020/1380 for alterations and additions to 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:	Anthony Paul Korbel Rachel Anne Korbel
Applicant:	Anthony Paul Korbel
Application Lodged:	03/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	15/11/2021 to 29/11/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 989,974.00

EXECUTIVE SUMMARY

The application seeks a review of the determination of DA2020/1380 for the alterations and additions to a dwelling house, including a new double garage and swimming pool, which was refused by the Northern Beaches Development Determination Panel (DDP) on 23 June 2021.

At that meeting, the DDP refused the application due to the non-compliance with the Manly Development Control Plan 2013. The non-compliance of the lower ground floor with the requirements for sunlight access and overshadowing contributed to a built form design that the DDP considered to cause unreasonable solar impacts. The proposal was also refused due to the elevated swimming pool and its potential impact on the privacy of neighbouring property.



In response to the DDP refusal, the applicant has submitted an amended design, including a 16sqm reduction in the floor space ratio (FSR) of the lower ground floor, increases in the southern side setbacks of the lower ground floor and northern setbacks to the swimming pool, a swimming pool size reduction, removal of the swimming pool planter and an increase in landscaping.

The amended plans and documentation submitted with this Review have been considered against the reasons for refusal and it is concluded that the reasons for refusal have been adequately addressed by the amended plans and that the proposal has demonstrated compliance with the relevant controls within the Manly DCP which were included as reasons for refusal.

The notification of the review application resulted in two (2) submissions each objecting to the development. A number of concerns each raised in the submissions are resolved by the amended plans, particularly those relating to impacts upon the privacy levels.

Therefore, the proposed amendments made under this review application, with applied conditions, are sufficient to satisfactorily address the issues identified in the original assessment report and the Panels reasons for refusal.

Accordingly, there are grounds to change the assessment and determination with the application referred back to the DDP with a recommendation for approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks a review of the Northern Beaches Development Determination Panel (DDP) refusal of DA2020/1380, for the alterations and additions to a dwelling house, including a new double garage, swimming pool and associated landscaping.

The Panel refused the application for the following reasons contained in the Assessment Report:

- *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 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan.*
- *2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan.*
- *3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.9 Swimming Pools, Spas and Water Features of the Manly Development Control Plan.*

The application is accompanied by the following amended plans, that include the following:

- Reduction in the floor space ratio of the Lower Ground Floor Plan of approx.16sqm.
- Reconfiguration of the Lower Ground Floor plan, with the removal of the master bedroom and en-suite located at the south-east corner to address solar access to the southern neighbour.
- Increase in the southern side setback of the dwelling from 1.7m to 5.4m.
- Increase in the northern side setback of the dwelling from 4.0m to 4.7m - 4.0m.
- Removal of the garden roof in the south-eastern corner.
- Removal of windows WD.03, WD.04 and WD.05 on the southern elevation.
- Reduction in the additional ground floor balcony area from approx.33sqm to 25sqm.
- Reduction in the size of the swimming pool from 50sqm to 39sqm.
- Increase in the side setback from 1.6m to 1.65m from the northern boundary to the swimming



- pool.
- Reduction in northern external access stairs.
- Deletion of the pool planter.
- Increase in landscaping area, in the northern and southern side setback.

Section 8.3(3) of the EP&A Act, 1979 provides that the applicant may amend the proposal, however the consent authority must be satisfied that the amended proposal remains substantially the same as that considered in the original development application.

Council is satisfied that the amended proposal is substantially the same, and as such the application is referred to the DDP for determination.

Therefore, in summary, the revised proposal comprises of the following works:

Lower Ground Floor

- Demolition of existing internal and external stairs and walls.
- Bathroom/Laundry.
- Open plan living/dining/kitchen/Butler's pantry.
- Swimming pool (outdoors).
- Associated terrace and landscaping.

Ground Floor:

- Demolition of internal walls, and existing garage.
- Five (5) bedrooms.
- Bathroom with two (2) en-suites.
- Rear terrace extension.

External

- New double garage.
- New roofing.
- Associated landscaping.

ASSESSMENT INTRODUCTION

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

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



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

SUMMARY OF ASSESSMENT ISSUES

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

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 5 DP 9928 , 64 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The site is a rectangular shaped lot, located on the eastern side of Woodland Street. It has an area of 822sqm, a width of 15.24m, and a length of 53.95m. The topography has a significant fall from front to rear, with an approximate fall of 11.8m. There is an existing two storey dwelling on site, and two single garages attached to each other, but detached from the dwelling, located in the south eastern corner of the site on a nil setback to the front and side boundaries. A sewer easement runs across the rear setback of the subject site. The site contains various mature trees, and large rock outcrops in the rear yard area. Surrounding development consists of multi-level dwellings, of varying ages, within landscaped settings

Map:



SITE HISTORY

On 13 November 2020, Development Application No. DA2020/1380 for alterations and additions to the dwelling house, including a new garage and swimming pool was accepted by Council.

On 23 June 2021, the application was presented to the Northern Beaches Development Determination Panel (DDP) for determination, with a recommendation of approval. The DDP disagreed with the recommendation for approval, and refused the Development Application following reasons:

1. 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 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.9 Swimming Pools, Spas and Water Features of the Manly Development Control Plan.

Subsequently, the current application was lodged and accepted by Council on the 2 November 2021, with an amended design to seek a review of the original determination.

Response of Review Application to the Reasons for Refusal

The applicant has provided amendments and additional supporting information with regard to the reasons of refusal. Consequently, the reasons for refusal of DA2020/1380 that are stipulated in the Notice of Determination are examined below with regard to amendments and supporting information:

1. The application would result in unreasonable impacts upon the amenity of adjoining properties with regard to solar access, inconsistent with the requirements and



objectives of clause 3.4.1 (Sunlight Access and Overshadowing) of Manly Development Control Plan 2013.

Comment:

The minutes provided by the Development Determination Panel provided the following statement with regard to Sunlight Access and Overshadowing:

- *Further design changes are required to significantly reduce the level of overshadowing to the northern elevation windows at the rear of the dwelling at 62 Woodland Street.*

The review application involves the removal of master bedroom and associated roof garden, and an increased setback to the southern boundary at the lower level from 1.7m to 5.4m. These amendments were accompanied by shadow diagrams that showed greater compliance with the controls for Solar Access under Clause 3.4.1 of the Manly DCP.

In particular, greater compliance is shown with the control that requires sunlight to the windows or glazed doors to living rooms of adjacent properties be maintained for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June).

As a result of the amended proposal the reduced footprint and increased southern corner setback provides a more reasonable outcome with regard to Sunlight Access and Overshadowing.

2. The application would result in unreasonable impacts upon the amenity of adjoining properties with regard to visual privacy, inconsistent with the requirements and objectives of clause 3.4.2 (Privacy and Security) of Manly Development Control Plan 2013.

Comment

The minutes provided by the Development Determination Panel provided the following statement with regard to Privacy:

- *In regards to privacy and visual bulk of the pool, this should be setback further from the northern boundary and complemented with additional landscaping to reduce the impact on the adjoining property. This is considered in the context of the pool and curtilage to the topography of the site and surrounds.*

Amendments to the proposal have included increases in the lower ground floor northern and southern side setback, removal of windows on the southern elevation, reduction in the additional ground floor balcony area, reduction in the size of the swimming pool, reduction in northern external access stairs, and increased landscaping. It is considered that the amendments demonstrate sufficient separation from adjoining properties ensuring that the swimming pool will not cause any unreasonable overlooking or other privacy impact.

3. The application would result in unreasonable impacts upon the amenity of adjoining properties, inconsistent with the requirements and objectives of clause 4.1.9 (Swimming Pools, Spas and Water Features) of the Manly Development Control Plan 2013.

Comment:

The minutes provided by the Development Determination Panel provided the following statement with regard to Privacy:

- *In regards to privacy and visual bulk of the pool, this should be setback further from the northern*



boundary and complemented with additional landscaping to reduce the impact on the adjoining property. This is considered in the context of the pool and curtilage to the topography of the site and surrounds.

The amendments include a reduction in the swimming pool from 50sqm to 39sqm, reduced swimming pool length along the northern setback from 6.8m to 5.3m in length, increased setback from 1.6m to 1.65m, removal of the planter box overhanging the rock ledge adjoining the infinity edge of the swimming pool and increased landscaping.

Further to this, the proposal achieves consistency with the objectives of the clause (as further outlined in this report).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 23 June 2021 and the notice of determination was issued on 29 June 2021. The review was lodged on 3 November 2021 and is to be considered by the Development Determination Panel on the 22 December 2021, which is within 6 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 15/11/2021 to 29/11/2021 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 2 submission/s from:

Name:	Address:
Mr David Craig Turner Mrs Charlotte Lucy Turner	66 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Ms Alisan Smotlak Kn Planning Pty Limited	29 Bungaloe Avenue BALGOWLAH HEIGHTS NSW 2093

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

- **Stormwater.**
- **Survey accuracy.**
- **Swimming Pool.**
- **Privacy.**

The matters raised within the submissions are addressed as follows:

- **Concerns were raised by neighbours to the rear, No. 29 Bungaloe Avenue regarding stormwater.**

Comment:

Council's Development Engineers have reviewed the stormwater plans and are satisfied that the proposal is in accordance with the Northern Beaches Council's 'Water Management for Development Policy'.

The applicants have lodged a statutory declaration under Development Application DA2020/1380 stating that they were not able to obtain a stormwater easement from the owners of No. 31 Bungaloe Ave. The proposed system continues to include an absorption element, with a more than sufficient/required onsite storage to the satisfaction of Council's Development Engineer. Conditions of consent have been included to ensure that stormwater is disposed of in accordance with the plans and the policy.

This issue does not warrant refusal of the application.

- **Concern was raised with the accuracy of the survey and the details on submitted plans.**

Comment:

The boundary survey plan was prepared by an appropriately qualified registered land surveyor (NGEO Surveys). Council's assessment results in no indication that the information submitted by the survey or on the corresponding architectural plans is incorrect.

The swimming pool is located at the rear of the subject site on sloping topography, with existing rock outcrops. The amended design has removed the planter box to the eastern (downhill) side, which protruded out over the edge of a rock outcrop demonstrating a height of 4.7m above the ground level below. The removal of this element provides height of 1.8m and allows the swimming pool to generally sit atop of the rock outcrop area integrating the swimming pool into



the important natural/landscape features.

Accordingly, this matter does not warrant the refusal of the application.

- ***Concern is raised that there is privacy impacts from the swimming pool and No. 66 Woodland Street has requested 1.7m obscure glass boundary fencing along the northern elevation.***

Comment:

The swimming pool complies with the side and rear setback requirements for swimming pools. The proposed wet edge and landscape treatment located along the northern curtilage of the pool is non-trafficable and will provide a visual buffer between the pool and northern property.

Furthermore, the swimming pool will be significantly lower than the dwelling and primary private open space areas of No. 66 Woodland Street, with the potential for overlooking being more created from No. 66 Woodland Street itself due to the higher topography which gives rise to direct downward looking from No 66 Woodland Street into the subject site.

The northern curtilage is a wet edge and non-trafficable, as a result there is no glass boundary fencing proposed along this elevation, rather the boundary fencing is to be located along the western area of the swimming pool/terrace area. The addition of a 1.7m boundary fence, as requested by No. 66 Woodland Street, would significantly add to the bulk and scale of the built form. The fencing would not demonstrate a skillful approach to managing the visual privacy as a result of the slope, with a visual presentation being an un-modulated structure on the northern boundary that presents as a massing of bulk and scale, for no real advantage.

Accordingly, this matter does not warrant further amendment or the refusal of the application.

- ***Height and scale of the proposed pool and resulting visual impact as viewed from No. 62 Woodland Street.***

Comment:

The height and scale of the proposal is considered under the controls relating to development on sloping sites Clause 4.1.8 MDCP and Swimming pools Clause 4.1.9 MDCP, which are the most relevant controls to guide the built form in relation to a pool on a sloping site. The development is found to meet the requirements of these two controls (including providing a sufficient side setback) and is therefore reasonable with regards to height and scale.

Accordingly, this matter does not warrant further amendment or the refusal of the application.

- ***Concern is raised that there is privacy impacts from the stairs and pathways in the northern side setback and from the ground floor balcony area and No. 66 Woodland Street has requested 1.7m privacy screening along the northern elevation of the balcony area and the pathways to be removed.***

Comment:

The amended design reduces the size of the ground floor balcony from 33sqm to 25sqm, the only a small area forward of the rear building line. The balcony area is centrally located on the subject site and orientated towards the district views, not the northern neighbours habitable rooms or private open space areas. As a result, the amended balcony area does not create any unreasonable privacy impacts to the northern neighbouring property and a privacy screen is not required.



The pathway and access stairs in the northern side setback area are generally located at ground level, and below the topography level of the neighbouring property to the north with a landscaping buffer between the path and the northern boundary. This area is not considered to cause unreasonable privacy and removal is not required.

Accordingly, this matter does not warrant further amendment or the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The Landscape Referral review application for DA2020/1380 is assessed by an alternate landscape officer. The application is for alterations and additions to an existing residential dwelling, with additions inclusive of lower ground extension and construction of a new pool, with accompanying new landscape works. A Landscape Plan is submitted with the application and details existing trees to be retained and includes additional landscape treatment to the development site to enhance the landscape setting and the scheme complies with the landscape outcome intent of the Manly DCP. An Arboricultural Impact Assessment is submitted with the application and nominates the removal of Exempt Species, by either species type or by height, within the property and these do not require Council consent under the Manly DCP. Landscape Referral raise no concerns with the landscape component subject to protection of trees and vegetation, and the completion of the landscape works.
NECC (Development Engineering)	The revisions to the original application have not altered the original assessment by Development Engineering. The stormwater management plans have been revised to suit the revised architectural plans. Development Engineering support the application, subject to conditions as recommended.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response 14 December 2020 stating that the proposal is acceptable and demonstrates compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. As there are no design changes that would have an impact on the supporting an overhead electricity transmission line this referral response continues to be valid.

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.A388012_02 dated 28 September 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No.A388012_02 dated 28 September 2021).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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



supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

Ausgrid stated on the 14 December 2020 there would be no impacts to Ausgrid assets with the proposed alterations. No conditions were required. As there are no design changes that would have an impact on the supporting an overhead electricity transmission line this referral response continues to be valid.

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	5.6m - 5.0m* 7.7m	- -	Yes Yes
Floor Space Ratio	FSR: 0.45:1	FSR: 0.30:1 (250sqm)	-	Yes

* Based on extrapolated ground levels (pre-excavation) and AHD levels in accordance with the definition under MLEP 2013.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

Detailed Assessment

6.2 Earthworks

The development application was accompanied by a Geotechnical Assessment (ref: 33359S, dated 11 August 2020) and a Addendum letter (dated 6 October) in reference to the revised proposal. This report and its recommendations are included within the applied conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposals required excavation.

Accordingly, Councils Landscape officers have concluded that the impact of the earthworks will not unreasonably impact or disrupt vegetation on the property.



As such, the proposal is considered to be consistent with the provisions and the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.2 Earthworks within the MLEP 2013.

6.4 Stormwater management

The proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.4 Stormwater Management within Manly Local Environment Plan 2013.

The application has been referred to Council's Development Engineers who have assessed the proposed provisions for stormwater. Council's Development Engineers are satisfied with the stormwater provisions, subject to conditions of consent.

6.8 Landslide risk

The site is identified as being within the G2 and G4 area on the Landslip Hazard Map, and the objectives of this clause are applicable in relation to the proposal.

The development application was accompanied by a Geotechnical Assessment (ref: 33359S, dated 11 August 2020) and a Addendum letter (dated 6 October) in reference to the revised proposal. This report and its recommendations are included within the applied conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposal on sloping land.

As such, the proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2, 3 and 4 of Clause 6.8 Landslide Risk, within the Manly Local Environment Plan 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 822sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings per 500sqm	1 dwelling	-	Yes
	Dwelling Size: 112sqm	245sqm	-	Yes
4.1.2.1 Wall Height	N: 7.35m (based on gradient 1:7)	2.4m - 4.8m	-	Yes
	S: 7.7m (based on gradient 1:5)	4.6m - 5.2m	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.6m - 2.7m	8%	No
	Pitch: maximum 35 degrees	33 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Existing and maintained (garage 0.2m, and dwelling 7.9m)	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 1.3m (based on wall height) S: 1.76m	N: 2.4m - 4.7m Dwelling S: 1.36m - 5.4m Dwelling	- -	Yes Yes
	Windows: 3m	N 1.5m S 1.2m	50% 60%	No No

4.1.4.4 Rear Setbacks	8m	21m Dwelling 11.3m - 14.4m Swimming Pool	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% of site area (485.1sqm)	65.9% (542sqm)	-	Yes
	Open space above ground 25% of total open space (135.5%)	11% (59.4sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (189.7sqm)	53.6% (290.5sqm)	-	Yes
	3 native trees	>3 trees	-	Yes
4.1.5.3 Private Open Space	18sqm / 12sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.1m (frontage 15.24m wide)	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.8m	80%	No
	1m curtilage/1.5m water side/rear setback	N:1.9m water / 1.65m curtilage S:4.4m water / 3.4m curtilage	- -	Yes Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	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	No	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The Development Determination Panel refused the development application as the Panel found that the design was inconsistent with the provisions of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan.

Specifically, unreasonable solar access impacts on the southern neighbour, No. 62 Woodland Street, were created by the lower floor southern side addition (i.e. master bedroom), the associated rooftop planter and architectural feature adjoining the terrace and swimming pool area.

The amended development has attempted to resolve the unreasonable impact on solar access to the property to the south by undertaking the following design amendments:

- The lower ground floor plan was reduced in the southern corner by a length of 5.8m, and stepped in from the southern side boundary by 4m to provide a 5.4m side setback. See Figure below.

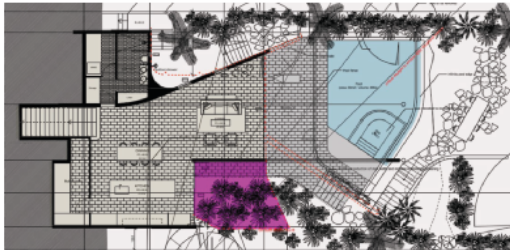


Figure 1: Floor area removed shown in pink.

- The reduction of the floor plan also removes the associated green roofing element to eliminate any further impact of the rooftop planter on solar access.

The amended proposal makes no significant change to architectural feature, with the design mimicking what currently exists. The feature is not responsive to the minimisation of overshadowing nor to the visual catchment of the site. This feature will be removed via a condition.

The neighbouring site, No.62 Woodland Street, did not register a submission raising concerns with the amended design.

The applicant has provided shadow diagrams demonstrating the current overshadowing situation in comparison to what would result from the amended design development.

The assessment has been undertaken below.

Description of non-compliance

The property to the south at 62 Woodland Street is most affected by the proposed development in relation to solar access. The position of the two dwellings (east/west orientation) combined with the sloping topography is such that the northern side setback of 62 Woodland Street is already significantly constrained in terms of solar access.

At No. 62 Woodland Street, the main private open space is located to the eastern area of the dwelling and comprises an extensive landscaped area from the dwelling to the rear. An additional decking area is located within the north-east corner of the dwelling. See figure and photo below.

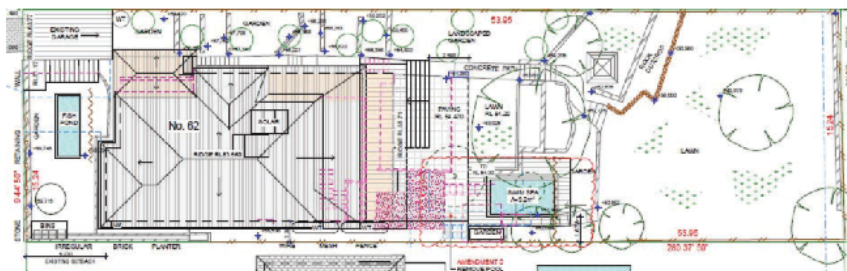


Figure 2: Site Plan of 62 Woodland Road showing the POS (source: NVisage).



Photo 1: Existing relationship between the subject site and southern adjoining property.

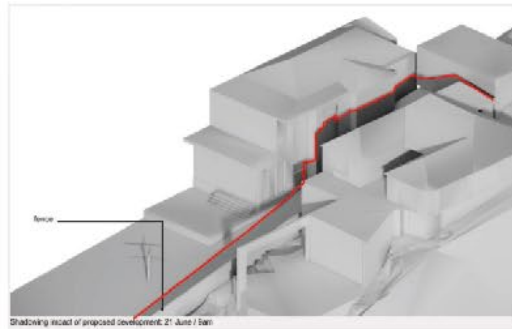
In order to compare and test the solar impacts of the amended design, as recommended by DDP, the applicant has submitted detailed shadow diagrams.

The diagrams demonstrate that there is a material benefit in terms of solar gain to No. 62 Woodland Street with the increased side setback of the lower level due to the nature of the design and the sites typography. A detailed assessment of the original and amended design against the controls is provided below:

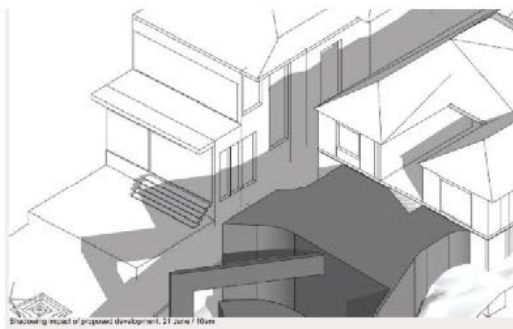
The submitted shadow diagrams demonstrate that No. 62 Woodland Street northern windows receive an improved level of sunlight between 9am and 12noon. After 12 noon the elevation is in full shadow. See diagrams below.



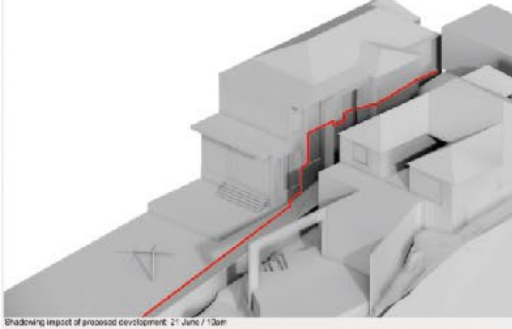
9am shadow impact from initial proposal



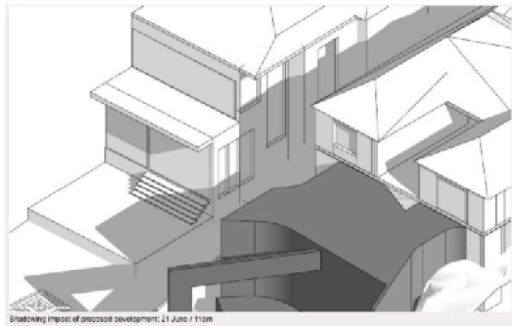
9am shadow impact from amended proposal



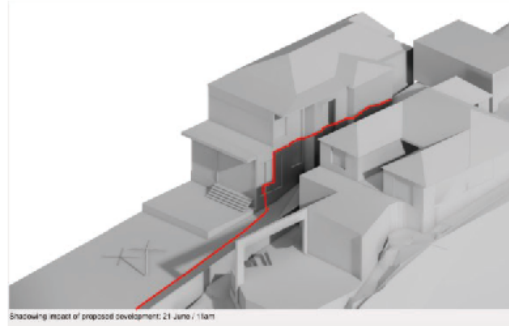
10am shadow impact from initial proposal



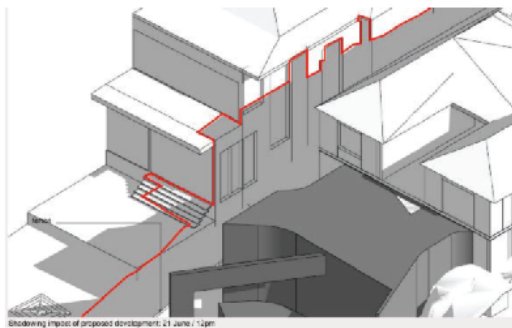
10am shadow impact from amended proposal



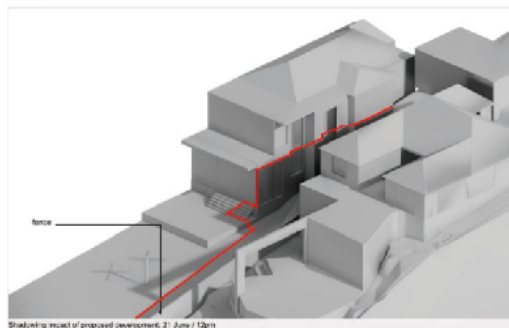
11am shadow impact from initial proposal



11am shadow impact from amended proposal



12noon shadow impact from initial proposal



12noon shadow impact from amended proposal

Note: Red line is existing shadow.

The diagrams above demonstrate that there is an improvement to the solar access to the northern windows as a result of the amended design. The amended design provides approximately 6.3sqm of additional solar access at 9am, with a demonstrated increase particularly between 9am and 11am.

Despite the improvement, the proposal continues to be non-compliant with the requirement to maintain the present level of solar access to windows or glazed doors to living rooms for a period of 2 hours, with a merit assessment being undertaken below.

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 provide equitable access to light and sunshine.

Comment:

As stated within the original assessment report, the living room window and glazed door in question are located on the lower level of the adjacent dwelling, orientated to the northern side setback. As a result of their location, the openings are particularly vulnerable to overshadowing by development of the neighbouring property.

The amended proposal continues to demonstrate compliance with the building height, and provides an improved side setback of up to 5.4m from the southern boundary. The architectural beam structure, whilst setback between 5.4m from the southern side boundary creates additional and unreasonable overshadowing, particularly to the east facing door, and will be removed via a condition. As a result,



additional area of sunlight will be to the rear decking area as a result of the removal.

The applicant has provided further diagrams for March 21 and September 21 indicating at those times of the year the northern window will be unshaded by the proposal between 9am and 3pm, and the east facing door will be self-shaded only. A reasonable outcome for the site, given the location and susceptibility of these door and window openings to overshadowing impacts, especially at the Winter Solstice.

Therefore, the amended design of the lower ground floor and the conditioned removal of the architectural beam feature will provide greater consistency with the provisions of clause and is supported.

Objective 2) To allow adequate sunlight to penetrate:

- ***private open spaces within the development site; and***
- ***private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.***

Comment:

The improved impact to No. 62 Woodland Street allows the maintenance of reasonable levels of sunlight to the lower level openings and living areas for reasonable portions of the day during mid-winter. Furthermore, occupants will have access to areas of private open space in direct sunlight throughout the entirety of the day.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- ***encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and***
- ***maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.***

Comment:

The amended design demonstrates the lower ground floor has been increasingly setback from the southern boundary, minimised floor to ceiling heights at lower ground floor level and incorporated reduction in the green roof form to reduce the shadowing impact to the living room windows and principal outdoor living area of the adjoining southern properties.

Conclusion

Therefore, it is considered that the amended proposal (as conditioned) represents a more skillful design that minimises the loss of sunlight to No. 62 Woodland Street. Accordingly, there are grounds to change the assessment and determination in relation to loss of sunlight and overshadowing.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.2 Privacy and Security

Concern was raised in the assessment of the original scheme in relation to the privacy impact of the



swimming pool to the northern property. Overlooking was associated with the swimming pool area with regard to potential overlooking into No. 66 Woodland Street existing private open space.

Whilst the DDP raised concerns with the northern adjoining site, the amended design has improved privacy impacts to both the northern and southern adjoining sites.

The amended building design has paid particular attention to ensuring there is no unreasonable privacy impacts, by undertaking the following:

- Removing windows on the southern elevation (WD.04 & WD.05)
- Increased setback of the lower ground floor from 1.7m to 5.4m
- Offsetting the additional windows on the northern elevation from neighbouring windows
- Orientating all elevated terraces are towards the rear of the site
- Reducing the size of the swimming pool from 50sqm to 39sqm
- Reducing the length of the swimming pool along the northern elevation from 6.8m to 5.3m in length
- Non-trafficable wet edge along the northern and eastern elevation and increasing the landscaping within the side setbacks.

Whilst the side setback increase is minor, the swimming pool proposed wet edge and landscape treatment located around the northern curtilage of the pool is non-trafficable, and screening landscaping will provide a visual buffer between the pool and the neighbouring property to the north. Tiered garden beds, and boundary fencing will also assist in providing improved and appropriate levels of screening the northern adjoining site.

The lower topography of the subject site in relation to No. 66 Woodland Street ensures there is no unreasonable overlooking to the northern site. The primary private open space of No. 66 Woodland Street is located at a much higher topography, and a sufficient distance from the proposed swimming pool location. See below.

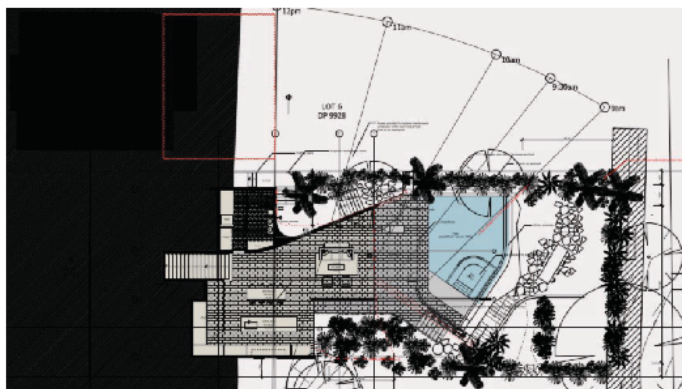


Figure 3: Primary private open space location of No. 66 Woodland Street (circled in red) in relation to the proposed swimming pool area.



Photo 2: Existing view lines towards the subject site from the primary private open space of No. 66 Woodland Street. The existing garden wall provides a visual buffer.

As a result, the amended design continues to locate the proposed swimming pool away from any habitable rooms, and primary private open space area of the northern neighbouring property and is not likely to result in any unreasonable privacy impacts.

Amendments have also been undertaken to the northern elevation to improve any perceived privacy impacts. The side setbacks to the dwelling and rear access stairs have been increased, with an increase in the additional landscaping to be planted within the setback to screen and obscure overlooking.

However, the amended design creates additional privacy impacts specifically to the southern adjoining site from the lower ground floor terrace area, where previously the master bedroom/en-suite created an obstruction for overlooking. The lower ground floor terrace is located 3.5m - 4.5m from the side setback, with the stairs finishing at 2.3m from the side setback. The terrace height is above the existing fence line at RL56.36, thereby creating the ability for occupants to directly look into the southern site, their rear recreational area, as well as backward viewing to the private open space area adjoining the dwelling house.

Due to the elevated nature of the terrace and the spatial distance, it is recommended that a 1.6m privacy screen be installed along the southern entire elevation of the terrace to prevent overlooking.

The privacy screening is to extend along the new stairwell, as these stairs are the principle pedestrian access to the rear of the site and are orientated to the southern adjoining site. As such, it is anticipated that the use of this stair will give rise to visual amenity impacts to the southern neighbour. Therefore, it is considered appropriate to require screening to be installed along the entire southern edge of the stairs to mitigate further overlooking opportunity (and the perception of being overlooked) into the private open space areas of the site to the south.

A submission received from No. 66 Woodland Street raised concern regarding the overlooking from the ground floor elevated balcony extension servicing bedrooms.

The intent of clause 3.4.2 Privacy and Security is that direct views from an upper level shall be designed to prevent overlooking. The Land and Environment (*Meriton v Sydney City Council [2004] NSWLEC 313*) established a planning principle for the protection of visual privacy, where it was considered overlooking



from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.

However, the balcony area serves a purpose beyond that which the Court considered to be typically intended for bedroom use, as the balcony is designed to be used as an outdoor area in which to actively stand and/or sit (i.e. not sleep).

Due to the significantly elevated nature of the balcony, the spatial distance (i.e. 5.9m to the southern boundary, and 6.0m to the northern boundary), the green roof surrounding the balcony and the outlook that is orientated outward to the east where the view lines are located, not downward towards the adjoining dwellings, it not considered that privacy treatments are required.



Photo 3: Photo of existing obscured view lines across the northern elevation from the ground floor balcony to No. 66 Woodland Street.

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 minimise loss of privacy to adjacent and nearby development by:

- **appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and**
- **mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.**

Comment:

As detailed above, the amended design will result in an increased level of privacy between properties. The swimming pool area and associated terrace are sufficiently separated from private open space areas and the incorporation of privacy screening will remove unreasonable directly overlooking into the southern side boundary. Along with the increased landscaping to provide sufficient screening, this amended design provide a reasonable outcome for minimising privacy loss.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

Given the above, the proposed development (as conditioned) retains adequate privacy for the residential developments to the north-east and south-east, while allowing sufficient access to light and air, and balancing of views.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The amended proposal continues to propose sufficient windows and open balcony areas to allow passive surveillance and encouraging awareness of neighbourhood security.

Conclusion

Direct overlooking into the neighbouring private open space areas is effectively mitigated by the additional landscaping and non-trafficable area along the northern and eastern edge of the swimming pool, and additional mitigation measures of window removal from the southern elevation have been incorporated into the amended design. The conditioned privacy screen ensures the amended terrace design minimises overlooking impacts particularly to the southern adjoining site due to the sloping topography.

The proposed design changes (as conditioned) minimise the potential privacy impacts, therefore there are grounds to change the assessment and determination in relation to privacy impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.9 Mechanical Plant Equipment

The Manly DCP 2013 requires external mechanical plant systems (for pools, and the like) to be be acoustically enclosed and centrally located. A condition is imposed in the consent to ensure the proposal will not result in any unreasonable impacts on the acoustic privacy of the neighbouring property.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

There is no change to the roof height of 1.6 - 2.7m under this review application. This assessment accepts the variation to the numerical controls for the reasons outlined in the Assessment report for DA2020/1380.

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

There is no change to the non-compliance with providing a minimum 3m side setback for windows, as the the ground floor windows continue to be located located 1.5m from the northern side boundary, and 1.2m from the southern side boundary under this review application. This assessment accepts the variation to the numerical controls for the reasons outlined in the Assessment report for DA2020/1380.

4.1.9 Swimming Pools, Spas and Water Features

The Development Determination Panel refused the development application as the Panel found that the design was inconsistent with the provisions of Clause 4.1.9 Swimming Pools, Spas and Water Features of the Manly Development Control Plan.

Specifically, unreasonable privacy impacts to the adjoining neighbours, No. 62 & 66 Woodland Street, were created by the elevated swimming pool area.

The amended development has attempted to resolve the unreasonable privacy and bulk and scale impacts to the adjoining properties by undertaking the following design amendments:



- Reduction of the overall height of the swimming pool via the deletion of the pool planter
- Reduction in the size of the swimming pool
- Reduction in the size of the swimming pool from 50sqm to 39sqm
- Reduction in the length of the swimming pool along the northern elevation from 6.8m to 5.3m in length
- Reduction in the stair width on the southern elevation
- Increase in the landscaping within the northern and southern side setback



Figure 4: Area of pool planter removed shown in pink.

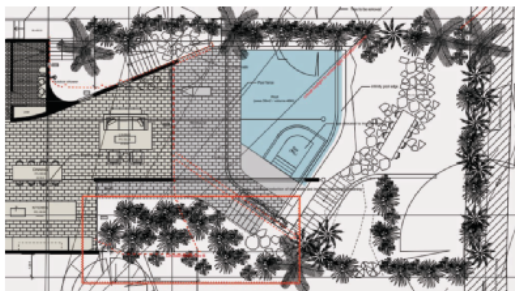


Figure 5: Additional area of landscaping in the southern side setback.

The swimming pool design will continue to demonstrate a wet edge around the northern and eastern curtilage of the pool that is non-trafficable to minimise and privacy impacts.

Despite the amended design, the swimming pool continues to be inconsistent with the maximum height of 1.0m prescribed by this control. Nonetheless, the siting of the proposed swimming pool does not result in any adverse impacts upon the amenity of the adjoining property, and the proposal is consistent with the objectives of the control, as follows:

- ***To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties.***

Comment:

The swimming pool proposed wet edge and landscape treatment located around the northern and eastern curtilage of the pool is non-trafficable, and screening landscaping will provide a visual buffer between the pool and the neighbouring property to the north. Tiered garden beds, and boundary fencing will also assist in providing appropriate levels of screening the southern adjoining site.

As discussed previously within this report (see section 3.4; 3.4.1 and 3.4.2), the proposed pool has compliant side setbacks of 1.65m to the north and over 5.5m from the southern boundary and is not



considered to result in amenity impacts concerning privacy (visually and aurally) and loss of light and outlook to the neighbour. Furthermore, it is considered that the location of the proposed pool integrates into the important natural/landscape features such as rock outcrops into the proposal. As such it is considered that the proposal demonstrates that an exception to the requirement of this clause is warranted and the objectives of this control are achieved.

The proposed swimming pool is located away from any habitable rooms of the neighbouring properties and is not likely to result in any unreasonable acoustic privacy impacts.

The pool plant has been conditioned to limit the associated noise to no more than 5dB (A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

- ***To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.***

Comment:

The proposed elevated pool, located within the rear yard of the subject site, is consistent with other examples of elevated pool structures within the Streetscape, including No. 62 Woodland Street elevated swim spa, and will not adversely impact upon the streetscape or the character of the locality.

- ***To integrate landscaping.***

Comment:

Adequate landscaping is incorporated into the development. As mentioned above, the proposal complies with the relevant minimum controls. The northern side of the pool, whilst raised 1.65m above ground level does not provide a trafficable area therefore reducing the overlooking capability towards the dwelling and private open space of the adjoining site to the north. The incorporation of the planting along the southern side of the terrace at the eastern end of the pool will provide additional screening and assist in softening the structure to adjoining properties.

- ***To become an emergency water resource in bush fire prone areas.***

Comment:

Not applicable.

Conclusion

Direct overlooking into the neighbouring private open space areas is effectively mitigated by the compliant side setbacks, additional landscaping and non-trafficable area along the northern and eastern edge of the swimming pool. As a result, the proposed design changes minimise the potential privacy impacts, therefore there are grounds to change the assessment and determination in relation to privacy impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 \$9,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$989,974.

CONCLUSION

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

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

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

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

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

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 MLEP 2013, MDCP and the relevant codes and policies of Council.

This assessment has taken into consideration the revised plans, revised Statement of Environmental Effects, other documentation supporting the application and public submissions.

The amendments to the proposal, new documentation and applied conditions have resolved the built form, character and site suitability issues forming the basis of the reasons for refusal of the



Development Application.

The critical concerns relating to the solar access and privacy as a result of the lower ground floor footprint and spatial separation to the southern boundary have been addressed by the 16sqm reduction in the FSR and increase in the southern side setback. With the amendments to the floor space/built form and swimming pool at the southern and northern end of the site, the proposal now creates acceptable and reasonable privacy, amenity and overshadowing impacts to the adjoining properties.

Two (2) submissions were received in response to the notification of the review application. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report and are not concurred with as the amendments resolve these concerns.

The proposal (as conditioned) displays reasonable scale and density compatible with the surrounding development. Therefore, proposed amendments made under this review are sufficient to address and overcome the issues identified in the previous assessment and satisfy the reasons for refusal.

Accordingly, the application is referred back to the NB LPP with a recommendation 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 REV2021/0040 for Review of Determination of Application DA2020/1380 for alterations and additions to dwelling house on land at Lot 5 DP 9928, 64 Woodland Street, 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 Analysis DA0003 Rev C	27/7/2021	Mono-Gram Pty Ltd
Existing Lower Ground Floor DA0004 Rev C	27/7/2021	Mono-Gram Pty Ltd
Existing Ground Floor DA0005 Rev C	27/7/2021	Mono-Gram Pty Ltd
Existing Rooftop DA0006 Rev C	27/7/2021	Mono-Gram Pty Ltd
Proposed Lower Ground Floor	27/7/2021	Mono-Gram Pty Ltd
Proposed Ground Floor	27/7/2021	Mono-Gram Pty Ltd
Proposed Rooftop	27/7/2021	Mono-Gram Pty Ltd
North Elevation DA2002 Rev C	27/7/2021	Mono-Gram Pty Ltd
East Elevation DA2000 Rev C	27/7/2021	Mono-Gram Pty Ltd
South Elevation DA2001 Rev C	27/7/2021	Mono-Gram Pty Ltd

West (Street) Elevation DA2003 Rev C	27/7/2021	Mono-Gram Pty Ltd
West Elevation DA2004 Rev C	27/7/2021	Mono-Gram Pty Ltd
Proposed Long Section 1 Rev C	27/7/2021	Mono-Gram Pty Ltd
Proposed Long Section 2 Rev C	27/7/2021	Mono-Gram Pty Ltd
Proposed Long Section 3 Rev C	27/7/2021	Mono-Gram Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report Ref: 33359SF rpt	11 August 2021	JK Geotechnics
Addendum Geotechnical Report	6 October 2021	JK Geotechnics
Arborist Report Job No: 5575	11 October 2021	Monaco Designs

b) 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
Ground Front Landscaping Plan LP03-D5320 Rev E	14/10/2021	Landscape Design Sydney
Lower Ground Landscape LP02-D5320 Rev E	14/10/2021	Landscape Design Sydney
Ground Rear Landscape LP04-D5320 Rev E	14/10/2021	Landscape Design Sydney

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

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

2. **Prescribed Conditions**

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



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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:



- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a



safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

4. **Sewer / Water Quickcheck (Crown Land Only)**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

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

- o Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- o Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- o Or telephone 13 20 92.



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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,899.74 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 \$989,974.00.

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

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

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

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

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

6. Security Bond

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

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

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

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



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

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

7. On Slab Landscape Works

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed: i) 300mm for groundcovers and lawn; ii) 600mm for shrubs.

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

8. Amendments to the approved plans

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

- The architectural beam feature located at the rear of the site adjoining the lower ground floor swimming pool/terrace area is to be removed from the approved plans.
- A minimum 1.6m high privacy screen is to be erected along the southern edge of the ground floor terrace and attached access stairs. The privacy screen shall be of a vertical louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention and a level spreader in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Soliman Hanna & Associates, drawing number 20-048 D1 and D2 Revision D, dated 06/10/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The grated drain 'level spreader' is to be connected to the silt arrestor pit and include



weep holes at the base to ensure it drains into the subsoil and during storm events the discharge is evenly dispersed along a level contour.

2. An inspection outlet is to be provided in the outlet pipe adjacent to the orifice plate for future inspection and maintenance.

3. The surface inlet pits placed upstream of the detention tanks are to be positioned to collect surface flows and connect them directly to the OSD tanks with no surcharge.

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

10. **Structural Adequacy and Excavation Work**

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

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

11. **Waste Management Plan**

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

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

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

12. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **Project Arborist**

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



branch protection, and ground protection.

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

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

All tree protection measures specified must:

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

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

Note:

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

Reason: tree protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

Should any Aboriginal 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.

15. **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 tree identified as T1 - *Callistemon viminalis* in the Arboricultural Impact Assessment, 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: Street tree protection.

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.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

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



the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

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

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

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

Reason: tree and vegetation protection.

17. **Road Reserve**

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

Reason: Public safety.

18. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor 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.

19. **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**

20. **Landscape Completion**

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

- i) all tree planting shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres or more from buildings, 2.0 metres from structures including driveways, walling and paths, and at least 1.5 metres from common boundaries,



- iii) the nominated *Rhapiolepis indica* 'Oriental Pearl' shall not be planted and shall be replaced with a non self-seeding species of similar form and size,
- iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space or solar collectors, and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative.
<https://5milliontrees.nsw.gov.au/>

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

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

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

Reason: tree protection.

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

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

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

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

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

23. **Swimming Pool Requirements**

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

- (a) All required safety fencing has been erected in accordance with and all other requirements



have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

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

24. 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.

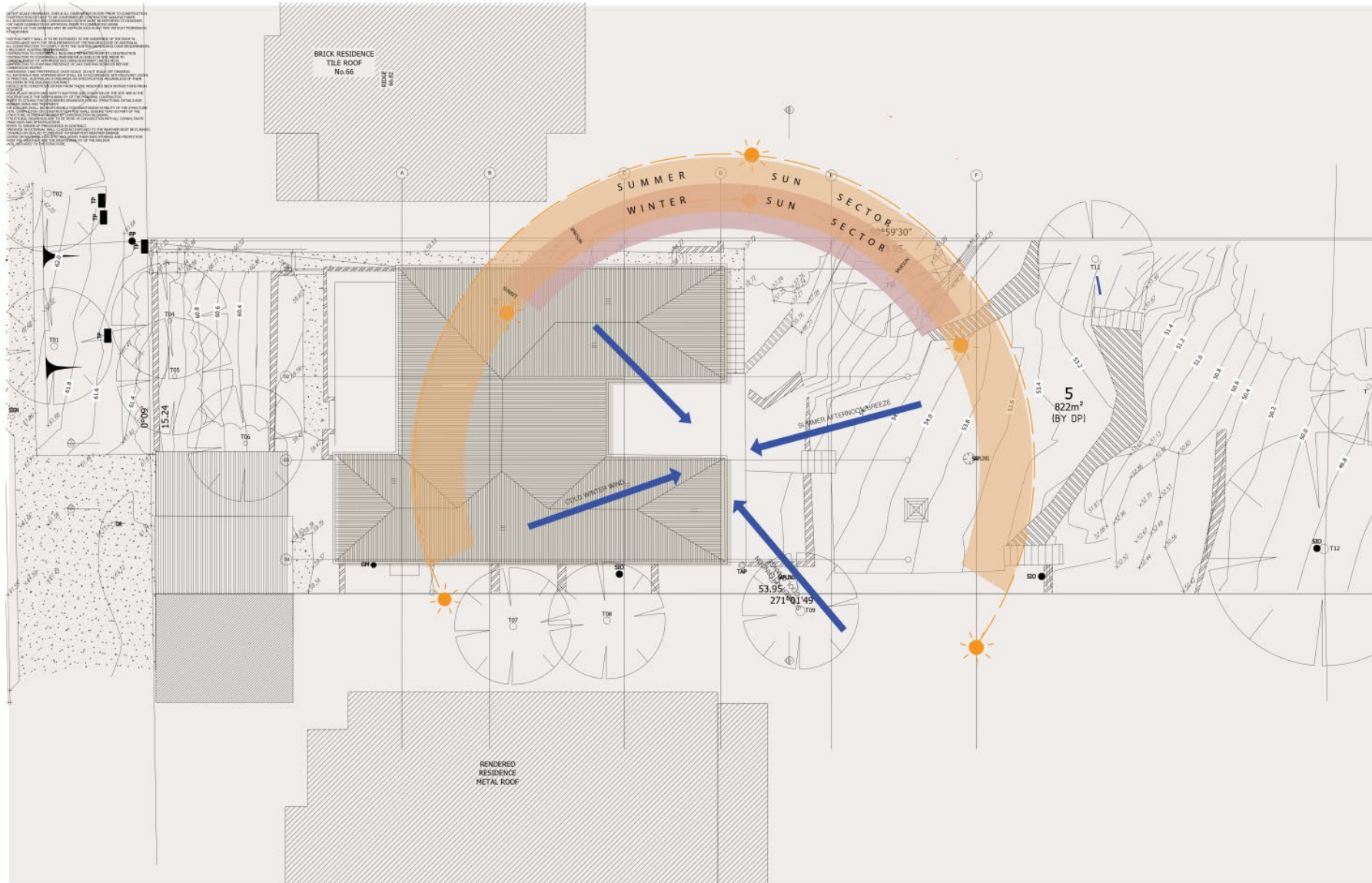
Reason: maintain local environmental amenity.

25. Swimming Pool/Spa Motor Noise

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.



Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.



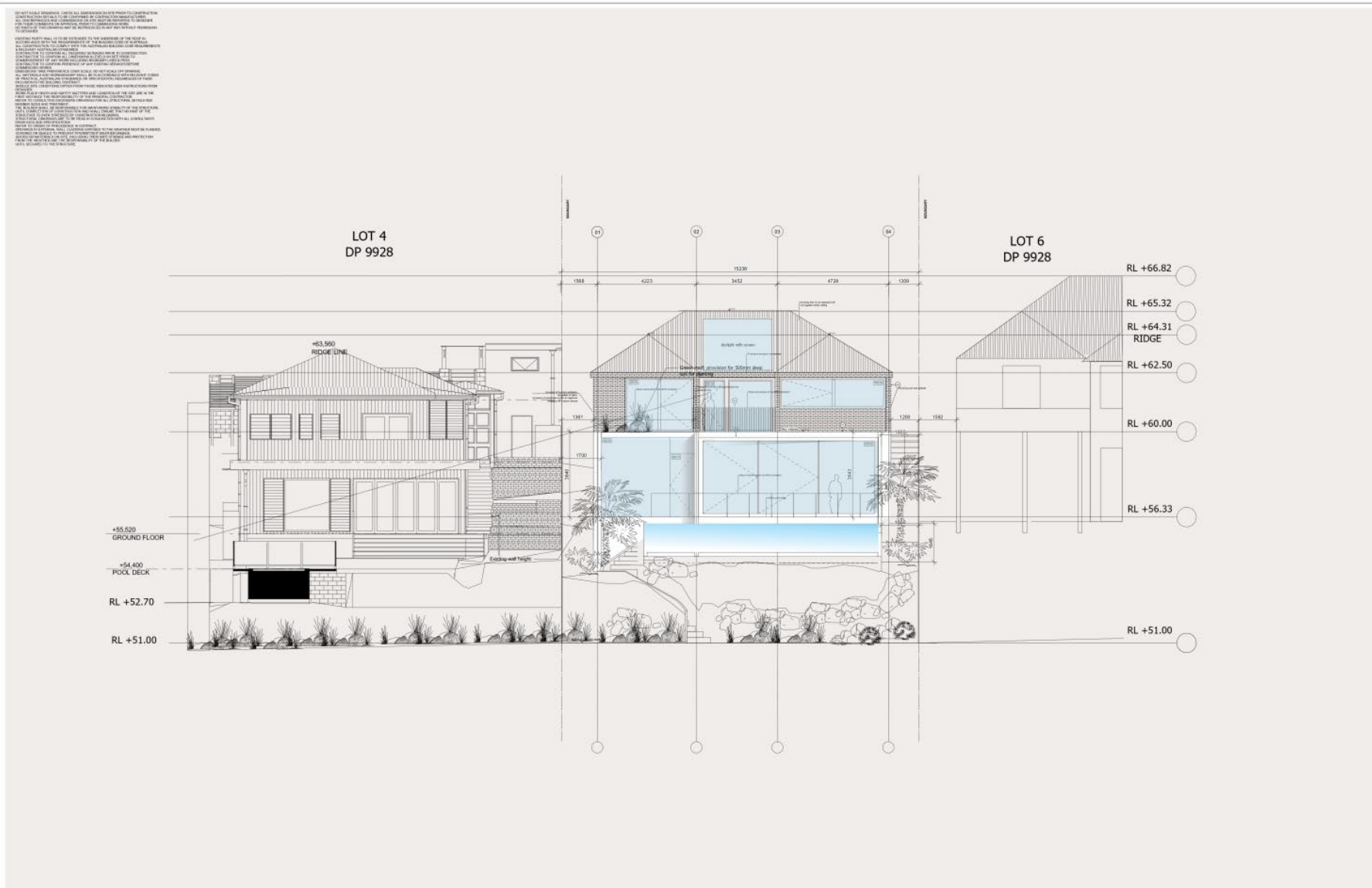
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Rev	Description	Date	Initial
A.	DEVELOPMENT APPLICATION	09.04.20	NT
B.	DEVELOPMENT APPLICATION	29.01.21	NT
C.	DEVELOPMENT APPLICATION	27.07.21	NT

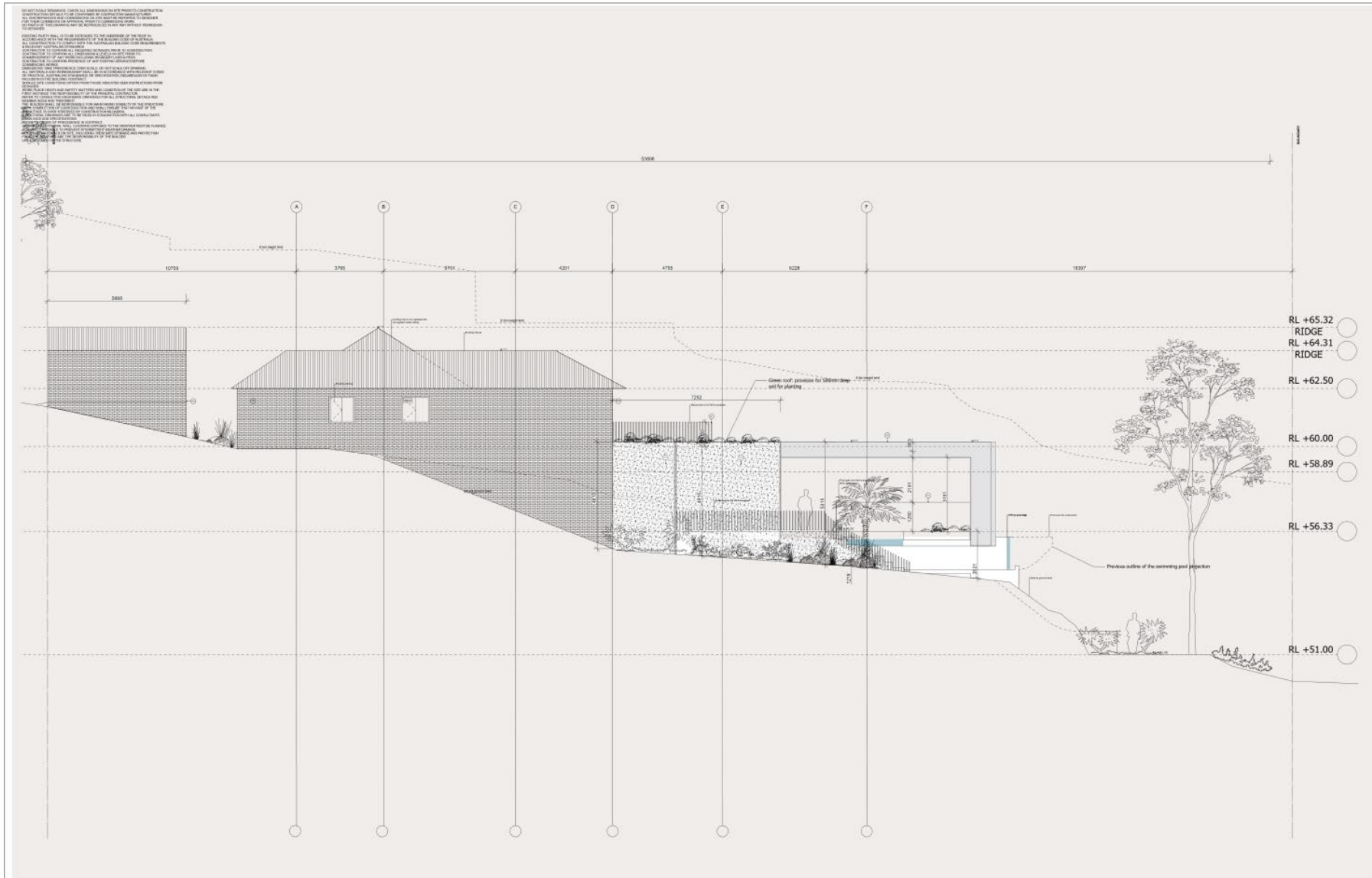
Project
KORBEL RESIDENCE
64 Woodland Street,
BALGOGLAH HEIGHTS NSW 2095
Alterations and Addition

Drawing title		
SITE ANALYSIS		
Drawing Number	Revision	Scale
DA 0003	C	1:200@A3
Drawn	Checked	Status

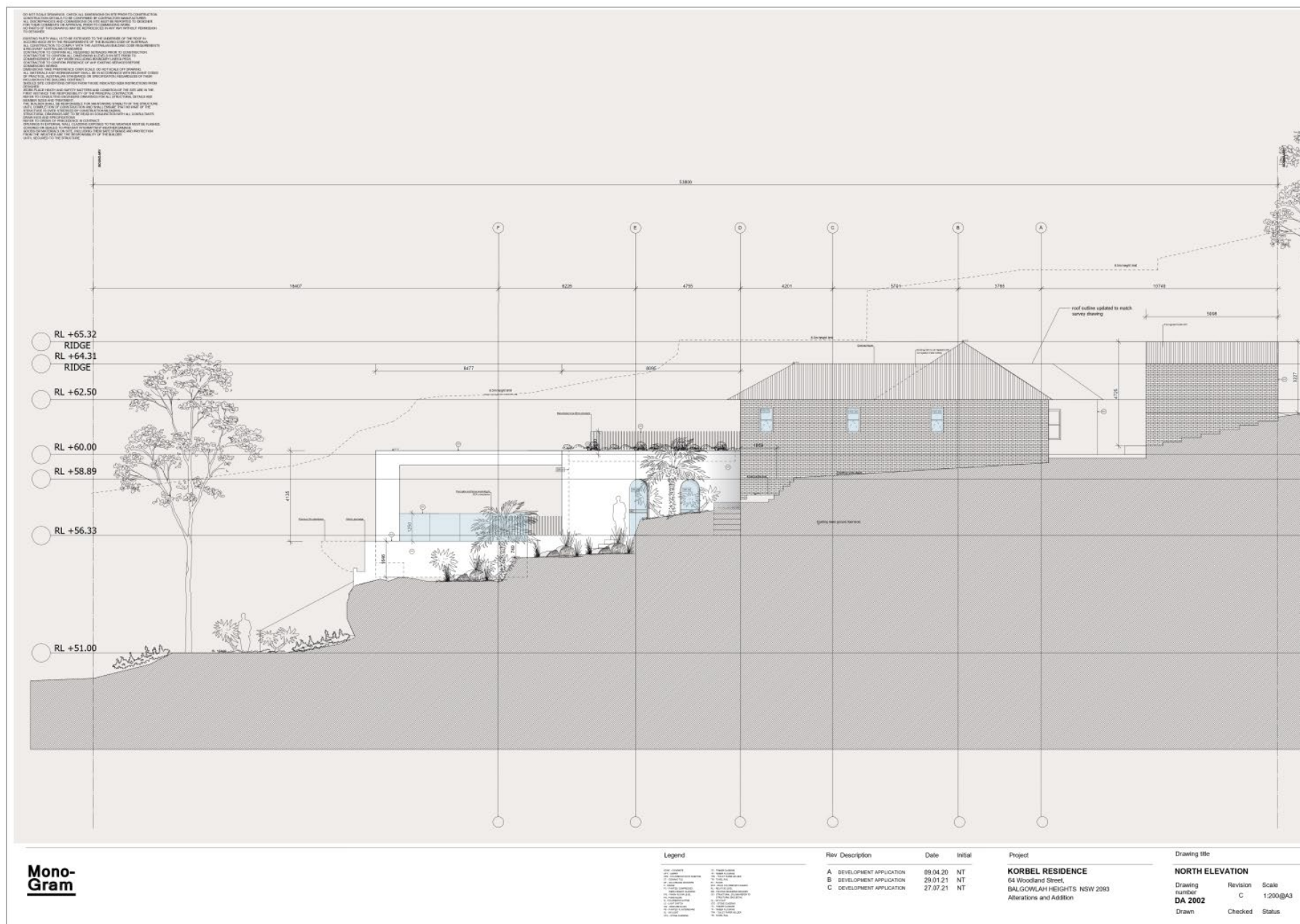


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Legend	Rev Description	Date	Initial	Project	Drawing title
01 SITE PLAN 02 FLOOR PLANS 03 SECTION ELEVATIONS 04 EXTERIOR ELEVATIONS 05 LANDSCAPE ARCHITECTURE 06 STRUCTURAL 07 MECHANICAL/ELECTRICAL/HVAC 08 WATER SUPPLY/SANITARY 09 FIRE PROTECTION 10 SPECIALTIES 11 UTILITIES 12 TRANSPORTATION 13 TELECOMMUNICATIONS 14 ENVIRONMENTAL 15 HISTORIC PRESERVATION 16 OTHER	A DEVELOPMENT APPLICATION B DEVELOPMENT APPLICATION C DEVELOPMENT APPLICATION	09.04.20 NT 20.01.21 NT 27.07.21 NT	NT	KORBEL RESIDENCE 61 Woodland Street, BALGOWLAH HEIGHTS NSW 2083 Alterations and Addition	EAST ELEVATION Drawing number DA 2000 Drawn Checked Status



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201



Drawing title		
WEST ELEVATION		
Drawing number	Revision	Scale
DA 2004	C	1:200@A3
Drawn	Checked	Status

ITEM 3.5	DA2021/0356 - 32 REDDALL STREET, MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Rebecca Englund
TRIM FILE REF	2021/852358
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

- A. THAT Council as the consent authority **approves** Development Consent to DA2021/0356 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 87 DP 70416, 32 Reddall Street, Manly, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0356
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 87 DP 70416, 32 Reddall Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Trustees Roman Catholic Church Archdiocese Sydney Stephen Thomas Christine Michelle Thomas
Applicant:	Ben Larsson

Application Lodged:	20/04/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/04/2021 to 10/05/2021
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,500,000.00
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EXECUTIVE SUMMARY

The application is for alterations and additions to a dwelling house which is a listed heritage item, known as "Lorna Brae". The proposal is referred to the Development Determination Panel as Council has received more than 3 submissions by way of objection and the cost of works exceeds \$1 million.

The critical assessment issues for the proposal relate to heritage, driveway access, views, streetscape, building bulk, spatial separation and site related issues. The applicant has sought to respond to the issues raised by Council's Heritage and Engineering sections with specific amendments the plans to reduce building bulk and ensure driveway compliance. The application has addressed view sharing and also made comparison to a previous approval for alterations and additions on the site to assist with

visual analysis. Minor amendments were made to the plans to address heritage considerations with additional conditions of consent recommended to address any outstanding concerns.

The building complies with the building height and floor space ratio development standards. The proposal has some minor non-compliance with setbacks, wall height and landscaping, however this is considered to be reasonable in circumstances where the site is a corner allotment and the proposal seeks to retain the existing dwelling. All internal referrals support the proposal subject to conditions. No outstanding issues are raised pursuant to heritage considerations, engineering or landscaping works (including bandicoot habitat area).

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

PROPOSED DEVELOPMENT IN DETAIL

The development application (DA) proposes alterations and additions to a heritage listed dwelling house, involving:

Garage:

- Demolition of the existing garage, excavation and construction of a new 2 car garage (RL27.74).

New Basement and 2 Storey Additions:

- Excavation and new basement storage area (RL23.50) with stair access.
- Extension to create an open plan kitchen/living/dining area (RL26.65) with access to the garage and basement.
- First floor Master bedroom (RL30.0) with bathroom, storage, balcony and stair access.
- Connecting roof element alterations (parapet connection RL30.45).
- Gable roof ridge (RL34.42)

Original house Ground floor and Attic floor:

- Selected elements of roof and veranda to the existing dwelling to be renovated and altered / reinstated to original style.
- Partial demolition of selected internal and external elements of the main house.
- Renovation work within original house section, including bedroom / bathroom / laundry stairs/ window replacement, wall / roof and fireplace structure.
- Part demolition and changes to original house dormer / loft section.
- Attic style 'eyelid dormer' additions for bedroom, bathroom / storage.
- Existing original house roof apex (RL32.74).

Ancillary works:

- New swimming pool at RL26.65 with landscape courtyard area.
- Site drainage works and site preparation.
- Driveway construction, excavation.
- Site landscaping, fencing and associated site works.

Amended plans dated 24.11.2021 were provided on 30.11.2021 with changes to the driveway profile to address engineering requirements and changes to the loft section of the original house to reduce the size of the loft alterations. A minor correction to the plans was made regarding selected window type / description and the plans updated to version D dated 1.12.2021.

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 - 5.10 Heritage conservation
 Manly Development Control Plan - 3.2 Heritage Considerations
 Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 3.5.5 Landscaping
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 5 Special Character Areas and Sites

SITE DESCRIPTION

Property Description:	Lot 87 DP 70416 , 32 Reddall Street MANLY NSW 2095
Detailed Site Description:	The land is 696.7 square metres (sqm) in area and is located on the south-west corner of Reddall Street and College Street. The site has a splayed road with a maximum width of 15.2 metres (m) and a maximum depth of 45.72m. The existing house on the site known as "Logan Brae" is listed heritage item (Item I2) and the site is also in proximity to heritage items of St Patrick's Estate (item I131 and Item I32) and local heritage stone kerbs (I2) along Reddall Street.

The land falls moderately toward Reddall Street by up to 4.0 metres, with a series of low retaining walls toward the southern-western half of the site. The site also contains detached garage / outbuilding and landscape terrace areas with part masonry fences along the road frontage.

Vehicular access is available from College Street with the pedestrian access addressed to Reddall Street.

The site is in a location where limited views of the water horizon are available from adjacent sites generally at first floor level and not ground level. Land toward St Patrick's Estate is densely planted with large canopy trees that give some limitation to views of St Patrick's Estate from the site and adjoining land, especially at ground level. Large scale residential flat buildings in the vicinity include No.7 College Street and No.140 Addison Road.

There are no significant trees on the site or unique rock outcrops. The site is in a broader area that is identified as potential habitat for threatened species (long nosed bandicoots). However, existing structures on the site including masonry boundary walls / paving / lawn areas do not include any unique rock outcrops, major trees and natural hazards.

Map:



SITE HISTORY

Heritage Listing in Manly LEP 2013 as "Logan Brae" - Described as *"a spectacular and finely detailed example of Inter-War California Bungalow on a corner site. Featuring cobbled front, elaborate gable ends facing each. Street frontage. A fine example of California Bungalow Style building."*

Development Application No. DA2007/0518 for 'external alterations and additions to the existing dwelling including a rear ground and first floor addition and the installation of a new in-ground swimming pool' was approved by Council on 21.8.2008.

Pre-lodgement Meeting No. PLM2020/0192 for alterations and additions to an existing dwelling house was held with Council on 26.5.2020. Concluding comments / recommendations were as follows for the plans:

"The proposal is not acceptable and may be supported subject to a redesign prior to submission.

Specifically, amendments are required to be undertaken to the front, secondary and side setbacks. The proposed roof over the master bedroom needs to be redesigned and lowered to reduce the visual bulk to the streetscape and maintain reasonable view sharing from adjoining and surrounding properties.

Additional reports will be required to be submitted with the application"

Comment:

A series of amendments have been made to the plans by the applicant since the PLM (including during the DA process) to align the building works with the PLM advice and MDCP / LEP.

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)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Amended plans dated 24.11.2021 were provided on 30.11.2021 with changes to the driveway profile to address engineering requirements and changes to the loft section of

Section 4.15 Matters for Consideration'	Comments
	the original house to reduce the size of the loft alterations. A minor drafting correction was made to the plans by the applicant for plan set D, dated 1.12.2021. The supplementary information does not warrant renotification of the application pursuant to the <i>Community Participation Plan</i>. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (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. This includes considerations of views, privacy, heritage conservation, solar access, landscaping and the local amenity. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/04/2021 to 10/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Ms Elizabeth Therese O'Sullivan	32 Fairy Bower Road MANLY NSW 2095
Mr Noel Albert Davis	32 Fairy Bower Road MANLY NSW 2095
Mr Justin Alexander Graham	30 Reddall Street MANLY NSW 2095
Mr Stephen John Coll Ms Fleur Leanne Kennedy	5 College Street MANLY NSW 2095

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

1. Building height view impact
2. Overshadowing
3. Privacy
4. Construction impacts
5. Devaluation

The applicant provided a detail response (10.6.2021) to address the above matters and for the purpose of this assessment issues raised within the submissions are addressed as follows:

(Note: submission of "O'Sullivan" is a part owner of No.32 Fairy Bower Street and single owner of No.34 Fairy Bower Street.)

- *Concern regarding the building height and associated view impacts from College Street, Fairy Bower Road and Reddall Street including outlook to the ocean and St Patricks Estate.*

Comment: This issue is addressed in detail under the heading *Part 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height)* and *Part 3.4.3 Maintenance of Views* within this report. In summary, the proposal satisfies the height controls of the LEP and objectives of the DCP with a view analysis provided and has adequately addressed view sharing considerations. The proposal is consistent with the objectives of the storey height allowances under the DCP applicable for the circumstances of the existing development on the site and a previously approved scheme for alterations and additions to the existing dwelling shown to assist with a comparative analysis. The detailed plans, survey information, file records and site inspection make the view impact straight-forward and uncomplicated to consider without the need for height pole framing. A site inspection conducted at No.5 College Street has confirmed

the view lines and gap maintained to view the ocean in the space between No.30 and No.32 Redall Street. The single storey section of the connecting section also assists to maintain the outlook toward St Patrick's estate from the rear terrace of No.30 Reddall Street (See site inspection photos). In summary this issue does not warrant refusal of the application.

- *Concern the building will increase overshadowing and loss of sunlight enjoyment to neighbouring properties, including grass areas within No 5 College Street and natural light to No.20 Reddall Street.*

Comment: This issue is addressed in detail under the heading *Part 4.1.4 Setbacks (front side and rear) and Building Separation* within this report. In summary, shadow concerns raised within the submissions and the solar access diagrams submitted for the application have been considered in detail. This includes assessment of drawings A07 to A08 dated 2.3.2021 drawn by *Eaton Architects* that demonstrate the change in overshadowing has is compliant and maintains the objectives of the Manly DCP. The wall height and setback does not result in any unreasonable impact to No.5 College Street for shadowing, and to assist with shadow and building bulk issues a minor change to the garage height is recommended. It is noted that fencing and solar access is maintained in the mid part of the day to the front area for a short period. This issue has been addressed by the amended plans and with a condition for minor change to the garage height and does not warrant refusal of the application.

- *Concern that there will be privacy impacts from the balcony or windows to surrounding land of No.30 Reddall Street and No.5 College Street.*

Comment: This issue has been addressed in detail under *Part 3.4.2 Privacy and Security* within this report. In summary the balcony areas, window size and placement for the new additions do not create unreasonable overlooking or privacy or unreasonable amenity impacts to surrounding land. The side windows are generally small utility style windows for the original house and where at ground floor or close the the side boundary are protected by fencing / landscaping. Close side facing windows are generally bathrooms space / hall or wardrobe space. The northerly balcony, off the master bedroom, is enclosed by a 1.8m screen to prevent overlooking toward private open space. Therefore, this issue has been addressed within the design detail provided on the amended plans and does not warrant refusal of the application.

- *Concern that the building process will affect adjacent properties by noise, construction work and the like*

Comment: This issue has been addressed by standard conditions including construction management, dilapidation assessment and standard industry conditions for site works / environmental management (such as erosion, dust and noise controls). This issue does not warrant refusal of the application.

- *Concern that proposal will devalue adjacent land by the amenity impacts of views, privacy, sunlight.*

Comment: The relationship of perceived or real property values and market association with regard to land valuation and development work is not a relevant consideration of environmental assessment under the *Environmental Planning and Assessment Act 1979*. This issue does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported with conditions. The development application is for alterations and additions to an existing heritage listed dwelling. Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan, and against the following landscape controls of Manly DCP 2013 (but not limited to): • Section 3: General Principles of Development, including but not limited to clauses 3.2 Heritage Considerations, 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation, • Section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping. The subject property is a listed heritage item, being Item I220 House "Logan Brae", and in terms of landscape elements the masonry walls and piers of the existing front fence are retained as required to satisfy clause 3.2.3 Fences for Heritage Items and Conservation Areas. A Landscape Plan and a Arboricultural Impact Assessment is provided with the application. The site does not contain any prescribed (ie. protected under the DCP) trees. The Landscape Plan indicates three existing Exempt Species trees to be retained within the property as well as the existing street trees within the College Street road verge, and provides additional landscape works to enhance the landscape setting of the property, including the provision of three native trees. All existing street trees shall be preserved and protected. The Arboricultural Impact Assessment recommends the retention of all street trees along College Street, and this is supported by tree root investigations that determine the proposed driveway across the road verge will not impact upon the viability of the trees. The report recommends the removal of Exempt Species T2 (Cocus Palm), G3 (Cocus Palms), and T4 (Alexander Palm). The Landscape Plan nominates T2 and T4 for retention. T2 shall be removed as this is identified as a Weed Species, and the retention of T4 is not considered necessary to achieve the landscape outcome of the Manly DCP landscape controls and may be removed as an Exempt Species. Council consent is not required for removal of Exempt Species and as such no conditions of consent shall be imposed for retention of any of the Exempt Species. Landscape Referral raise no objections to the application, subject to the completion of landscape works and the protection of all existing street trees.
NECC (Bushland and Biodiversity)	Supported with conditions. The application is supported by a Biodiversity Assessment that has assessed the site values, assessed the impacts of the development

Internal Referral Body	Comments			
	and provided a range of suitable impact mitigation measures. The report has considered the relevant biodiversity planning controls, and assessed the potential impact of the development to the endangered population of Long-nosed bandicoots. While there is a reduction in total landscaped area, mitigation measures regarding maintained or improved access and connectivity as well as landscape requirements are provided. The report concludes that a significant impact to the endangered population is unlikely.			
NECC (Development Engineering)	Supported with conditions. <u>Revised Referral Response 6.12.2021</u> Development Engineering has no objection to the application subject to the following conditions of consent. <u>Referral Response 24.4.2021</u> The applicant proposed a new driveway crossing on road reserve to accommodate a new garage. The proposed floor level of the garage is RL 27.74. However, the existing footpath outside the proposed garage is between RL 28.2 (western side) - RL 27.92 (eastern side). The footpath is about 500 mm higher than the proposed floor level of the garage on the western side. The existing footpath level shall not be amended to accommodate a driveway crossing. As such, the gradients of the proposed driveway does not comply with the Australian Standard 2890.1. The applicant shall amend the design of garage to ensure the accessibility of the driveway. In this regards, Development Engineering cannot support the application as the clause 4.1 of Council's Manly DCP 2013. Also, the applicant shall provide three longitudinal sections of the driveway for assessment.			
Strategic and Place Planning (Heritage Officer)	Supported with conditions <table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td> The proposal has been referred to Heritage as the subject property is a listed heritage item, being Item I220 – House “Logan Brae” and adjoins heritage listed stone kerbs Item I2, along Reddall Street. The property is also within the vicinity of heritage items, listed in Schedule 5 of Manly Local Environmental Plan 2013: Item I131 - St Patrick’s Estate - 151 Darley Road (Primary address, alternate address 106 Darley Road) Item I132 - St Patrick’s Estate - Darley Road </td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject property is a listed heritage item, being Item I220 – House “Logan Brae” and adjoins heritage listed stone kerbs Item I2, along Reddall Street. The property is also within the vicinity of heritage items, listed in Schedule 5 of Manly Local Environmental Plan 2013: Item I131 - St Patrick’s Estate - 151 Darley Road (Primary address, alternate address 106 Darley Road) Item I132 - St Patrick’s Estate - Darley Road
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Internal Referral Body	Comments
	Item I2 - All Stone kerbs - Along Reddall Street Details of heritage items affected Details of the heritage items, as contained within the Northern Beaches Heritage Inventory are: Item I220 – House “Logan Brae” <u>Statement of Significance</u> A spectacular and finely detailed example of Inter-War California Bungalow on a corner site. Featuring cobbled front, elaborate gable ends facing each. Street frontage. A fine example of California Bungalow Style building. <u>Physical Description</u> Single storey Inter-War California Bungalow on a corner site, constructed of dark face brick. Features elaborate gable ends to each street frontage, cobbled finish to front verandah base and columns, diamond-pattern leadlight casement windows. Original dark face brick front fence. Diamond - pattern leadlight casement windows. Item I131 - St Patrick’s Estate <u>Statement of significance:</u> St Patrick’s Estate is a site of national heritage significance. The unparalleled grandeur of the cultural landscape, including its setting, buildings and landscape components, as well as the history it embodies, reflects a unique physical manifestation of the Catholic Church in Australia, not seen in any other location in the country. The site exemplifies an important period in the Church’s history in Australia, as well as the vision of Cardinal Moran, and for that reason has great significant to Australian Catholics, as well as the broader community. The built elements, particularly Moran House with its Gothic Revival architectural style, reflect both the romanticism of Cardinal Moran’s vision for the Australian Catholic Church, as well as the austere nature of the Church at that time. Sited on the prominent northern side of North Head, overlooking Manly and the surrounding area, St Patrick’s has become a landmark recognised by locals and visitors alike. Despite recent redevelopments of parts of the site, and the adaptive reuse of the key buildings, the site has retained its integrity and still presents as a cohesive whole. <u>Physical description:</u> St Patrick’s Estate is a complex cultural landscape comprising many significant components, including buildings, grounds, gardens and landscape elements (including walls, pathways, and

Internal Referral Body	Comments																					
	significant trees). It is magnificently sited on the northern slopes of North Head, overlooking Manly and Ocean Beach, and it is a prominent and striking landmark in the Manly area. Architecturally, the complex comprises a variety of Nineteenth and early Twentieth Century buildings primarily in Gothic Revival style. The most prominent of these is Moran House, a four storey symmetrical sandstone building with bell tower at the centre, above the main entrance, which is also flanked by a two storey colonnade. The kitchen wing was added in 1935. Key vistas include looking south east toward the building from the town centre, and from the front of Moran House looking north west towards the town centre. Also remaining on the northern part of the site are: - The former Recreation Centre (1910). This is a simple federation style building at the rear of Moran House, though it has undergone a number of changes over time, some of which has compromised its integrity. - St Therese's Convent (1934). This is a two storey Edwardian building with rendered walls and stone trim, comprising the main residential area as well as a chapel. An unsympathetic addition was made in 1962. - Kelly House (1954). Sited to the north east of Moran House and connected by a walk way, the four storey building is made from a simple face brick, and whilst does not exhibit the detail of the other earlier buildings, it is a neutral addition to the site, and does not detract from the key elements.																					
	<table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>Yes</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table>	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		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
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Internal Referral Body	Comments
	windows. It also includes the construction of a swimming pool and new landscaping works. It is considered, that the proposed dormer window addition to the front elevation will dominate the existing roof form, resulting in an adverse impact upon the significance of the heritage item. Any new development should be located set back behind the existing external walls, however the proposed additions are located further closer to the street, dominating the views to the heritage item. Therefore, Heritage requires the following amendments to the proposal: • overall height of the link between the heritage item and the new additions should be reduced (preferably lower than the original roof level) to be less visible • proposed setback of the new additions to the College Street boundary should be increased by at least 200mm • dormer window facing the street should be reduced in size to become a more traditional eye-lid dormer • proposed RLs of the dormers should be provided • surrounding original fabric to the existing fire place to be retained and noted on the plans • diamond patterned leadlight casement windows which are proposed to be removed from the front verandah are recommended to be reused replacing the newer windows of the existing verandah facing College Street • proposed attic level layout is preferred as presented in the amended PLM drawings, as it is considered to have less impact upon the heritage item <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? HIS provided

Internal Referral Body	Comments
	with PLM has not been updated. Conclusion Heritage Revised Assessment for Amended plans received on 31 November 2021: Amended plans were submitted on 30 November 2021 by the applicant. These amended plans have resolved some concerns that Heritage had with the proposal but there are remaining matters that need to be addressed: - proposed setback from College Street should be increased at least by at least 200mm - existing chimney should be retained and shown on the elevations not only on the plan - top of the proposed dormers should be RL 32.44 - at least 300mm below the ridge height of the main roof and the width of the proposed dormer, facing Reddall Street, should not be any larger than 3500mm - existing diamond patterned leadlight windows facing College Street should be retained in-situ and noted on the drawings - proposed new fence along College Street to match existing It is noted, that the new connection between the original house and the new addition could be further reduced in height. It is also noted, that considerations should be given to the reduction of the floor to ceiling height (2.7m for ground level and 2.4 for first floor level) to reduce the overall height, and therefore to minimise the impact upon the heritage items and the impact on the existing visual setting. Therefore, no objections are raised to the proposal on heritage grounds, subject to 5 conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Supported with conditions. The proposal was referred to <i>Ausgrid</i> who provided a response received 26.4.2021 stating that the proposal is acceptable subject to compliance with the relevant <i>Ausgrid Network Standards</i> and <i>SafeWork NSW Codes of Practice</i>. 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, and has been subject to previous renovations / alterations. 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. A346623_02 dated 23.2.2021) for the dwelling.

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. In response no objections are raised and no conditions are recommended.

Other Service Authorities

The proposal does not require referral to Transport NSW (formerly RMS) and no other Service Infrastructure Authority referral issues are raised pursuant to the SEPP. Requirements of Sydney Water are managed by separate administrative processes for all Sydney Water assets.

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:

In summary, the proposal is consistent with Clause 13 of SEPP Coastal Management (2108) including the "Coastal Use Area" and "Development in the Coastal Zone Generally" areas with no unreasonable impact with regard to SEPP coastal area considerations, including height, appearance, landscaping, site management and the like.

- (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:

In summary, the proposal is consistent with coastal area considerations for design, including siting, height, appearance, landscaping, site management and the like.

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 site is subject to SEPP Coastal Management (2018) as the boundary extends along the Shelly Beach / Fairy Bower areas of Manly. The site is not readily visible from the foreshore or ocean area due to the density of surrounding development. The proposal is in close proximity to similar density development and various buildings in the vicinity that have an easterly outlook (to the water). The proposal has been considered in the context of the SEPP requirements.

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

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

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

Comment:

The proposal is not in a location that is subject to coastal hazards or threat from wave action or cliff line landslip.

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	8.1m	N/A	Yes
Floor Space Ratio	FSR:0.6:1	FSR: 0.53:1 (372.7sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

5.10 Heritage conservation

The proposal has been subject to amendments to address heritage impacts on the original house. These amendment principally relate to the external appearance of the new 'eyelid' style dormers. Changes involve minor internal change to the loft bedroom area / bathroom / storage.

A detailed heritage assessment has been provided by Council's Heritage Officer in order to ensure the proposal meets the Manly LEP objectives and considerations under Clause 5.10. This has been achieved by amended plans. See full details under the heading "Heritage referral response within this report".

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 699.1m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height (Gradient 1:10 long axis) (Gradient <1:60 short axis)	7.1 m (Gradient 1:10 long axis)	6.1m College Street front 6.5m Loft / gable side	N/A N/A	Yes. Yes

		wall		
	6.5m (Gradient <1:60 short axis)	7.8m Loft main bedroom east wall 7.4m Loft main bedroom west wall	20% 13%	No No
4.1.2.2 Number of Storeys	2	2 storeys and basement store / services room	N/A	Yes.
4.1.2.3 Roof Height	Height: 2.5m	1.7m (New bedroom) 2.5m (Original house)	N/A N/A	Yes. Yes
	Pitch: maximum 35 degrees	2 to 30 degrees	N/A	Yes.
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	College Street: consistent with prevailing setback Basement 2.55m Garage wall 2.55m Living room wall 2.3m Original dwelling sunroom 1.0m Reddall Street: Consistent with prevailing setback Original dwelling wall 8.2m Front verandah 6.2m	N/A N/A N/A Existing N/A N/A N/A	Yes Yes. Yes. Yes (No change) Yes Yea Yes
4.1.4.2 Side Setbacks	East Ground Floor: 1m (based on wall height) East First Floor- 2m (based on wall height)	Basement: 4.7m Garage 4.4m Original House: 0.9m Main Addition	N/A N/A Existing N/A	Yes. Yes No (Eaves and existing wall)

		First Floor: 2.9m to 4.4m Pool 0.9m	10%	Yes No
	North Ground Floor: 1m (based on wall height) North First Floor- 2.2m (based on wall height)	Basement 1.3m Garage wall: 1.3m Main Addition First Floor: 8.2m	N/A N/A N/A	Yes. Yes. Yes.
	Windows: 3m	3m	N/A	No, but small utility side windows used where <2 metres setback from boundary. See comments under privacy. Existing 1.8m side fences remain for ground level. (see survey)
4.1.4.4 Rear Setbacks	N/A	Dual street frontage	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (383.2sqm) Open space above ground <25% (95sqm) of total open space	38% (267sqm) 12.7% (21sqm)	30%	No Yes.
4.1.5.2 Landscaped Area	Landscaped area >35% (134sqm) of open space	37% (144sqm)	N/A	Yes.
4.1.5.3 Private Open Space	18m	97sqm	N/A	Yes.
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.8m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground 1m curtilage/1.5m water side/rear setback	0.10m 0.9m/1.5m	N/A 10%	Yes. No, see comments.
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	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
3.2 Heritage Considerations	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

The objectives of Part 3.2 Heritage Considerations are addressed as follows:

Merit Consideration:

- The DCP seeks to retain and conserve environmental heritage and cultural significance of Manly including significant fabric, setting, relics and view associated with heritage items and conservation areas. This includes foreshore areas and associated views in a heritage setting and cultural aboriginal heritage. The subject site does not contain any identified aboriginal relics, and the setting of the building is outside the conservation zone of St Patrick Estate. Views toward St Patricks estate from adjacent properties are not unreasonably obstructed by the proposed additions due to the corner site location and density development with the estate and surrounding tree canopy. The heritage identification of the subject dwelling and its characteristics have been addressed by Council's Heritage team and appropriate changes made to the plans as part of the assessment process.
- The DCP seeks to ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality. In this regard, the proposal was subject to a pre-lodgement review and recommendations provided to ensure an appropriate design response. The application seeks to re-instate and repair selected original elements and follows the approach of the "Burra Charter" for the new garage and living area additions.
- The DCP seeks to ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items. In this regard the contemporary response does not seek to replicate entire heritage details or character of the original building, but includes measures to retain and restore the major integrity with complementary building form, including style, materials, colours and finishes and building/street alignments when viewed from Reddall Street. The view from College Street is addressed by the lower connecting area between the "new" and "old".
- The proposal does not seek to change any visible public infrastructure such as retaining walls, sandstone kerbs or the like as part of the works.
- The proposal does not require an ongoing conservation management plans as the original use for a single dwelling is retained and the house remains in private ownership as a family home.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

General Amenity considerations pursuant to the objectives and requirements of *Clause 3.4 Designing for Amenity* are as follows:

Merit Assessment Comments:

- Design considerations have been made to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties with regard to the demolition work, new additions and renovations. The surrounding area has a mix of higher densities (such as No.7 College Street and No.140 Addison Road) single dwellings, including dual occupancy, terrace style Units and smaller apartment buildings. This mix of housing styles may potentially impact on neighbour's amenity, including privacy and solar access. Considerations of these elements have been accommodated in the design in particular for the use of gable roof style and non-trafficable side "garden terrace". This terrace has a 1.8m full screen for the bathroom windows / hall and provide weather protection to the living area doors below. Details on the plans show the appropriate use of screens, room orientation, window styles (sill height), wall setbacks and landscaping.
- The design of the additions are of a contemporary architecture at the side (rear of the original dwelling orientation) and is consistent with the "*Burra Charter*" approach for older buildings where the original building fabric / design is of Inter-War architectural period. This approach does not unreasonably detract from the scenic amenity of the area, by way of external appearances including the use of pressed slate, render and re-instated cladding. The principle original roof form of the original house is retained with a suitable colour scheme between the two elements to minimise reflectivity (with the exception of the minor mirror cladding element deleted by condition). In particular, the visual pattern of bulk and design of the new additions facing College Street is consistent with the height and bulk of nearby dwellings and does not have an unreasonable impact on public space and private (outdoor) space.
- Adequate space on site is retained for open space (including a new pool) to provide a landscape setting and meet the recreational needs of the occupier for the dwelling design but the changed internal layout and connection to balcony areas. The proposal has been designed to ensure no unreasonable amenity of existing and future residents and includes privacy, outlook, solar access and general amenity of adjoining and nearby properties including noise and excavation impacts, subject to conditions. This includes consideration of adjoining properties of No.30 Reddall Street and No.5 College Street ground level, terraces and living areas.
- The materials and finishes selected are suitable for the surrounding urban environment in terms of reflectivity including the roof material and style and window glazing extent for walls. The use of screens, wall articulation, roofing, wall materials, glazing and stonework heritage style materials and colours are appropriate for the dwelling house and consistent with the Manly DCP to ensure no unreasonable impact to the existing streetscape and surrounding amenity.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.1 Sunlight Access and Overshadowing

Specific solar access requirements and objectives, pursuant to Clause 3.4.1 Sunlight Access and Overshadowing, are considered as follows:

Merit Assessment Comments:

- The proposal will maintain equitable access to light and sunshine for adjacent properties that are situated on the western and eastern sides of the site respectively. The submitted solar access diagrams (A07 to A08 drawn by Eton Architects) demonstrate that the building design and separation to other surrounding dwellings assist to maintain sunlight access private open space that is compliant with the MDCP.
- The submitted shadow diagrams provided by the applicant demonstrate that the existing solar access will not be unreasonably reduced during 9am to 3pm for private open spaces of the adjacent dwellings. In addition, the windows to the living spaces/ habitable rooms, in particular the ground floor will maintain reasonable solar access in consideration of the corner position with an east to westerly alignment of the property.
- The proposal does not unreasonably reduce the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas and has been designed to include modulation of new building bulk beside the original heritage house and to give sunlight penetration into the living areas of the development site and not unreasonably affect adjacent properties. The corner position of the site means most shadow is cast toward College Street road area. The scale of No.140 Addison Road also cast significant shadow to surrounding land.
- The site has a (marginally offset) east to west orientation, the level of solar access impact to adjacent property windows (No.30 Reddall Street and No.5 College Street) indoor and outdoor living areas between 9am to 3pm on the winter solstice (21 June) will maintain reasonable amenity in accordance with the objectives of the DCP and Planning Principle considerations for Access to Sunlight outlined in *Parsonage v Ku-Ring-Gai Council* [2004] NSW LEC 77.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.2 Privacy and Security

Specific privacy requirements and objectives, pursuant to *Clause 3.4.2 Privacy and Security*, are considered as follows:

Merit Assessment Comments:

- The proposal has been designed to ensure no unreasonable loss of privacy to adjacent and nearby development by the use of design responses including window size and placement, including use of sill heights, fencing, narrow or translucent or obscured glass windows to maximise privacy and where necessary the use of screening devices and landscaping. The "eyelid" style dormers to the original house are associated with a secondary bedroom area and therefore a low use area. The landscape terrace on the northern side of the master bedroom (above the living / dining area) has a 1.8m screening to prevent overlooking from internal windows toward the pool area of No.30 Reddall Street.
- Where walls are closer to the adjacent boundaries and some windows are less than 3.0m from side boundary windows are off-set where practicable or designed to ensure no unreasonable impact on the adjacent dwellings with regard to viewing by using smaller windows or appropriate sill heights where they face the side setback / or near adjacent windows. The building separation and landscaping is also provided to mitigate impacts on privacy appropriate to residential living in the surrounding residential environment. Adjacent dwellings also already use fitted screens (such as plantation style shutters and blinds) to regulate internal privacy for surrounding environment.
- The proposed additions have been designed with appropriate response to ensure no unreasonable impacts on privacy (both acoustical and visual) including the use of fixed glazing / screening between spaced buildings so that direct viewing is reduced. Generally the orientation is toward the street due to the corner location. Overall the proposal does not create direct unreasonable viewing toward properties adjacent as smaller style windows and screens are used to minimise privacy impacts along the side walls.
- Landscaping and privacy screening devices have been incorporated to mitigate direct viewing between windows and/or outdoor living areas of adjacent buildings. Overall the proposal provides an appropriate level of privacy in the context of the surrounding density of the residential living environment without unreasonably compromising access to light and air. Bedrooms areas, being normally occupied less during the day and used for sleeping at night will not be unreasonably impacted.
- The design of the proposed additions provide a street outlook and reasonable privacy to the side setbacks with regard to habitable rooms and private open space with appropriate security. In this regard ground level fencing and new landscape elements will assist to maintain screening and visual / acoustic privacy in between adjacent private open space at ground level.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.3 Maintenance of Views

The requirements and objectives of *Clause 3.4.4 Maintenance of Views* are considered as follows:

An assessment of view loss in respect of adjacent development has been undertaken with reference to the Views Principle established by the *NSW Land and Environment Court* as follows:

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

Comment:

No.30 Reddall Street

The view toward the ocean across the street and in a easterly direction is unaffected by the proposal. An alternative view toward St Patricks Estate is raised for consideration. This is across the main side boundary of the site and central area of the site. The local surrounding tree canopies of College Street and within St Patricks estate (Hospitality School Building) obscures opportunities for open view lines and the view outlook is vulnerable due to the east-west alignment of the subdivision pattern and position adjacent dwellings.

No.32 & 34 Fairy Bower Road

The view is toward the ocean horizon and along the alignment of College Street generally over the roof tops (and side boundaries) of No.1 to No.5 College Street. The existing height and roof span of these dwellings obscure the proposal which is on a site some 8m or more lower in elevation than the natural ridge position of No.32/34 Fairy Bower Road. The view from the living areas is in an elevated balcony position demonstrated by previous record of the view image below. (See also file record in TRIM of photos)



Image: Distant ocean view (note middle ground dwelling has been redeveloped). Site is obscured by the higher (white roofed) buildings of No.3 and No.4 College Street

No.5 College Street

Views include water elements on a diagonal and direct line over the side boundaries. The views include offshore areas in the vicinity of Shelly Beach headland and the ocean horizon. A detailed view analysis has been provided by the applicant with the assistance of overlay / wire frame to demonstrate the view context. (See detailed site photos for context of view outlook)



Image: Principle view in direct line across site from side room, upper floor, with limited water elements above the existing dwelling ridge on the site.

(red dotted line is outline of previous scheme that obscured the ocean horizon line)

- *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:

No.30 Reddall Steet

Views from the ground level are significantly limited due to foreground urban development, tree canopy and other surrounding ground level structures such as fences, walls and the like and require standing in the mid area of the rear yard to look southwards toward St Patricks Estate. Views from rear windows are at a direct side angle over the side boundary and are limited by tree canopies. Retention of the whole outlook is unrealistic, however the proposal has been designed with a central single storey connection to create a gap in the two elements that reduce bulk and visual impact.

No.32 & 34 Fairy Bower Road

The view to the ocean horizon is across multiple side boundaries and the position of the new works will not create any unreasonable impact to the higher roof forms between No.2 and No.5 College Street. The view line is highly vulnerable being across so many side boundaries however the much higher ridgeline position of No.34 Fairy Bower Road will ensure minimal impact.

No.5 College Street

The accompanying plans incorporate a view analysis which is outlined on 'Drawing A09-A prepared by Eaton Architects) indicating the view element of horizon retained. This has been modelled from survey information available to the existing development and survey / architectural information. The view analysis demonstrates that the proposed works with "wire-frame" overlay (and for comparative understanding the development scheme approved with DA2007/0815 is shown as a red-dotted line). The views are from a secondary side balcony and side windows in a diagonal direction and for alternative position of direct view across the site. The proposal will not unreasonably impact the harbour and land/water interface view currently available from the upper-level balcony and side window. The views can be obtained from standing and sitting level but are substantially closed out by the existing pattern of development and other intrusions of trees, distance and flat viewing angle.



Image: Standing position view across side boundary through the site toward ocean horizon.

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

Comment:

No.30 Reddall Street

This property has views from the front upper storey toward the ocean. The outlook toward St Patricks Estate is across the rear elevation and through the centre of the proposed development. Qualitatively the extent of the view impact to St Patricks Estate is regarded as 'minor' since the proposal has provided a central gap between the new additions and the main house to separate the building bulk.

No.32 & 34 Fairy Bower Road

The easterly view is from a wide upper level balcony and the proposed development will have a 'negligible' impact due to the much higher topography and two storey arrangement of this property. No ground level views are available.

No.5 College Street

The proposal impacts the left (south eastern) side of the horizon view. The view quality is regarded as low in that it is a narrow width of ocean horizon and gained through the side boundary. The view impact on the ocean horizon is assessed as a 'moderate' impact being such a constrained view line.

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

Comment

The proposal is compliant with the development standards for building height and FSR under the Manly LEP. The existing house is a heritage item and the 'eyelid' dormer window have been reduced that lessens the roof bulk on the northern original roof area. The additions of the garage, living and master bedroom have been designed as a semi-detached new section with a single storey connection to the original house to provide a break in the roof spans. The use of gabled roof form is sympathetic to the roof form of the original dwelling and aligns with the east-west ridge to provide a better view advantage for No.5 College Street with less close building bulk toward No.30 Redall Street. In consideration of this fourth step the proposal has sought to use loft style and gable roof forms with compliant setback for the new garage / living /bedroom element and compliant height that allows sharing of water views. Views to St Patrick estate are addressed by the break provided between the front and rear sections of the proposal.

With regard to the consideration of impact on views, the development is considered against the underlying Objectives of the Control as follows:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment:

The proposed alterations and additions to the heritage dwelling reasonably provides opportunity for view sharing at this location in adequately providing a design that is consistent with the surrounding pattern of development and by providing appropriate setbacks, a compliant building height and roof form that is consistent with the DCP requirements including the NSW LEC planning principle for views, applied above. This provides a situation in which the proposal provides a built form that is practicable for the corner location to allow for view sharing for existing development that overlook the site from surrounding or nearby dwellings.

- *To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

Views from Public places

The setbacks, compliant height and ridge line consistent with the prevailing pattern in the street, provide a situation in which reasonable spacing is provided to maintain adequate access to views from public places however there are no parks or public vantage points in direct view with regard to the development proposal.

- *To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

Comment:

The elements of the proposal creating the impact comply with the relevant planning controls. The roof form and height do not have an unreasonable impact on the views for surrounding and nearby properties. Importantly, the proposal is adequately below the building height control for the gable roof and is consistent with allowances detailed within the DCP for loft style and 2 storey alterations (including heritage listed dwellings) such that the extensions are to the rear of the original dwelling and minimise impact on the existing heritage roof area.

View Assessment Conclusion

The proposed building height is measured from the "ground level (existing)" on site and this relates to the normal landscape level of the land / garden area around the house. Although this is the case for the existing level on the subject site, it is also reasonable to consider the topography of the surrounding land as well as the pattern of ridge heights for dwellings in the immediate surroundings. There is a vulnerability to existing views at this location due to the subdivision pattern, distance from the shoreline, diagonal viewing lines, nature of the existing views (urban outlook vs direct water view) and height compliance of the proposal. The view impact from the balconies, living space and side windows with the question of a 'more skilful design' has been considered with regard to water views and views toward St Patrick Estate. Some minor changes were made to the plans during the assessment phase to address heritage related issues that have assisted in minimising the impact on views. The view impact is not unreasonable in accordance with the above considerations.

Given the consistency with the court established planning principle for views, amendments to address the development controls, building height compliance and design response that is consistent with the character of the area, including roof form of the heritage dwelling, the proposal reasonably minimises loss of views. In addressing views, a site inspection was conducted in the vicinity of the site along College Street, Reddall Street and Fairy Bower Road. Where private property entry was unavailable, survey data, existing Council file photos records and view analysis details from the applicant assist with overall view considerations. The use of 'wireframe' overlays provide a suitable alternative to height poles.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.5.5 Landscaping

Specific landscaping requirements and objectives, pursuant to *Clause 3.5.5 Landscaping*, are considered as follows:

Merit Assessment Comments:

- Landscaping has been selected that includes suitable trees and vegetation that is adaptable to the site conditions, including the site of ground level open space, soil / sunlight conditions, slope, proximity to existing vegetation, building services and to provide amenity to the occupants. This includes the use of landscape setbacks and maintaining the frontage to Reddall Street to complement the heritage building and streetscape.
- Detailed landscape referral assessment comments are provided under the heading "internal referrals" within this report. In summary, the landscaping is consistent with the objectives and requirement of this clause subject to conditions. This includes consideration for some where alternative tree planting where appropriate, including protecting (public) trees in the road reserve (along College Street) and particular feature trees on site to maintain landscape amenity. While there is a minor non-compliance with the total open space the deep soil landscaping and new areas are to be re-landscaped with new planting and features to suit the private open space / living areas.
- Landscape planting will assist to provide screening and complement the height and scale of the building by using a mix of small, medium planting. The site is not appropriate for very large

trees which would unreasonably impact surrounding outlook, light or potentially building elements over the long term. This is consistent with the pattern of surrounding development (including renewal and renovation of older dwellings) in the area surrounding St Patrick's Estate.

- The use of native trees suitable for the local environment are slow growing and adapted for low water requirements and assist to provide habitat and food sources for insects, birds and arboreal animals such as Bandicoot habitat throughout Manly. The site is not within a bushfire zone that would limit certain tree species from selection.
- Landscape elements have been designed to complement the architecture of the building and provide amenity when viewed from public and private land. The proposal has been designed to retain the main landscape open space principally on the northern (side setback) and Reddall Street frontage of the site and is convenient to the principal living areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Setback requirements and objectives, pursuant to *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation*, are addressed as follows:

Merit Assessment Comments:

- The proposal has maintained a central position for the footprint of the new additions, however there are some variations associated with the original house (being of Inter-war period construction) such as the eaves along the northern side boundary (adjacent No.30 Reddall Street) and the narrow setback to College Street, associated with the existing sun room of the original house. The proposal is considered to address development pattern of the street, the street edge (nature strip area) and the landscape character of the street with consideration to the historical context of the dwelling. The location of the pool is consistent with the placement of the adjacent pool in the rear private open space area and appropriate to the DCP. The pool position has a minor 0.1m variation to the DCP being positioned with a standard 0.9m (BCA type setback) to the northern side boundary. The setback to the south/western side boundary is 10.5m which is consistent with a normal rear yard setback, despite the site being a corner lot. The setback to College Street for the garage and living area additions is 4.41m which is sympathetic to the position of the original house. Landscaping and fencing work assist to maintain the character of the streetscape for the corner setback location.
- The proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like) with the exception of some direct sunlight impact on the front area for No.5 College Street. The dwelling design along all elevations includes some recessed elements and breaks in the side walls to reduce impacts of bulk and scale for the new additions. The existing non-compliance of the eaves and side wall envelope with No.30 Reddall Street does not result in any unreasonable impact.
- The proposal is consistent with the DCP objective to allow for the flexibility in the siting of

buildings while allowing for view sharing and maintaining opportunities for including views and vistas from private and public spaces, subject to some landscape conditions to ensure larger / taller type tree planting is consistent with the landscaping plan (not substituted for larger trees).

- Adequate side setbacks have been proposed to maintain natural features of landscaping including deep soil zones and appropriate planting subject to conditions. The proposed setbacks for the new garage and living / master bedroom additions allow for compliance with the *Building Code of Australia*. The changes to the original dwelling component has adequate access for maintenance, drainage work and internal amenity (minimum ceiling clearance). The nature of development does not unduly detract from the context of the site and particularly in relation to road frontages and front and side setbacks including the context of neighbouring properties and the prevailing building lines in the immediate vicinity.
- While the Sydney Harbour National Park is nearby the site is not subject to NSW RFS *Planning for Bushfire Protection*.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance, subject to conditions.

5 Special Character Areas and Sites

The site is in "Area D" and in close proximity to St Patricks Estate Manly which is a special character area for heritage conservation. Therefore, merit consideration pursuant to MDCP is addressed as follows:

- The proposal identifies the existing character of "Lorna Brae" dwelling in terms of distinguishing the new additions from the original parts of the dwelling house. The removal of the later addition outbuilding and replacement of the garage with additions and alterations seek to maintain landscape setback, similarity in roof pitch and sympathetic colours and materials for the new work. The general characteristics of the development will not detract from the St Patrick's Estate in terms of the established pattern and scale of development.
- The proposal will maintain the environmental protection qualities of the area (Area D - Long Nosed Bandicoot habitat) in that landscaped setbacks are to be provided for the development with new suitable planting. Additionally special conditions are recommended specific to Bandicoot protection measure for construction work and on going measures.
- The design of the architectural style of the additions and changes to the building are consistent with the approach supported by the "Burra Charter". In this regard, the proposal has included recommended minor changes by Councils Heritage Section to ensure the additions and alterations interpret and compliment the streetscape, original house and the surrounding natural and built environment.
- The proposal will replace a previous development approval on the site for similar scale additions. The scale of current development additions proposed are consistent with the built form controls and the existing and desired character of the residential area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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 \$25,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,500,000.

CONCLUSION

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

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

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

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

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

In summary, a detailed assessment has been required for the following specific issues:

The alterations and additions replace an existing garage and previous additions to the original Federation style dwelling known as "Lorna Brae" and the proposed work seek to renovate elements of the original house section and provide a new garage, basement area, and master bedroom in a two storey semi-detached addition. Works also include demolition of an outbuilding, construction of a new in-ground swimming pool and associated landscaping.

Building setbacks, height and amenity issues raised in submissions have been addressed by the applicant and minor changes to the plans to address heritage considerations. The property is a corner site, and in this regard the roof form, spatial separation, private open space and external materials are suitable for the surrounding environment. The residential building bulk, privacy (visual and acoustic), solar access, view sharing and minor changes made to the plans do not create unreasonable amenity impacts. Other construction related issues (erosion, dilapidation, site access and the like) are addressed by conditions. A referral condition change is recommended as the 'Planning Assessment Comment' provided under the heading "Heritage Referral" within this report as the condition may not be practicable. However, for the purpose of reporting all referral conditions are included as per the referral response.

In conclusion, the principal issues in the assessment have been addressed by the amendments to the plans received for heritage and engineering reasons are considered to maintain consistency with the objectives and requirement of the Manly LEP and DCP for the alterations and additions.

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 DA2021/0356 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 87 DP 70416, 32 Reddall Street, MANLY, 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
A03 Issue D - Site Plan	1.12.2021	Eaton Architects
A04 Issue D - Basement and Ground Floor Plans	1.12.2021	Eaton Architects
A05 Issue D - First Floor and Roof Plans	1.12.2021	Eaton Architects
A06 Issue D - Elevations	1.12.2021	Eaton Architects
A07 Issue D - Sections	1.12.2021	Eaton Architects
A01 Issue D - Cover Page External	1.12.2021	Eaton Architects

Finishes Schedule		
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Engineering Plans		
Drawing No.	Dated	Prepared By
A10 Issue D Driveway Profile	1.12.2021	Eaton Architects
H-DA02-00-A Legend, Notes and Catchment Calculations	24.2.2021	ITM Design
H-DA02-01-A Sediment Control and Basement Stormwater	24.2.2021	ITM Design
H-DA02-02-A Ground Floor and Roof Stormwater Drainage	24.2.2021	ITM Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix Certificate A346623-02	23.2.2021	BASIX Certificate Centre
Preliminary Geotechnical Investigation 6416-G1	15.5.2021	AssetGeoEnviro
Arboricultural Impact Assessment Report - Part 9 Recommendations	13.5.2021	Martin Peacock Tree Care
Heritage Assessment Assessment - Part 8 Recommendations	March 2021	Zoltan Kovacs

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
LDA-00 Landscape Cover Sheet	25.2.2021	Geoscapes
LDA-01 Landscape Plan	25.2.2021	Geoscapes
LDA-02 Specifications and Details	25.2.2021	Geoscapes
LDA-03 Planting Schedule	25.2.2021	Geoscapes

Waste / Sediment Management Plan		
Drawing No/Title.	Dated	Prepared By
H-DA02-01-A Sediment Control Plan	26.4.2021	ITM Design

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	26.4.2021

(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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$25,000.00 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 \$2,500,000.00.

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

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

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

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

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

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.

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

The applicant is to lodge a bond of \$ 2000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

8. **Compliance with Ecologist's Recommendations – Pre-construction**

All pre-construction biodiversity-related measures specified in the Terrestrial Biodiversity Report (GIS Environmental 25 February 2021) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures are to be certified by the Project Ecologist and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

9. **Photographic Archival Record**

A photographic archival record of the site is to be 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 and approved by the Certifying Authority prior to commencement of any demolition or works on-site.

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

- o Location of property, date of survey and author of survey;
- o A site plan at a scale of 1:200 showing all structures and major landscape elements;
- o Floor plans of any buildings at a scale of 1:100;
- o 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. **Details of the new fence**

The proposed new fence along College Street should match the existing fence. Details of this fence must be provided to Council prior to the issue of the Construction Certificate.

Reason: To preserve the significance of the heritage item.

11. **Amendments to the approved plans**

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

- o i) The ridge height of the garage gable is to be lowered to RL32.255 and the garage parapet to RL30.5. The garage floor to ceiling height is to be reduced to a minimum 2.41 metres (m) clearance in order to lower the overall bulk of this ancillary parking structure.
- o ii) The cement rendered balustrade section (PT1) for the 'juliette' balcony off the master bedroom facing College Street is to be replaced with a lightweight open style balustrade material of timber or similar to suit "PT2" as per the approved materials schedule.

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

Reason: To ensure development minimised amenity impacts of bulk and scale to adjacent land and streetscape.

12. **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.

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. **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.

15. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the pit connection which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

16. **Dormer windows**

Top of the proposed dormers should be RL 32.44 - at least 300mm below the ridge height of the main roof and the width of the proposed dormer, facing Reddall Street, should not be any larger than 3500mm. Details, demonstrating compliance with this condition, are to be submitted to Council prior to the issue of the Construction Certificate.

Reason: To preserve the significance of the heritage item.

17. **Setback from College Street**

The proposed setback to the new addition from College Street should be increased at least by 200mm. Details demonstrating compliance are to be submitted to Council prior to the issue of the Construction Certificate.

Reason: To prevent the new addition from dominating the heritage item.

18. **Existing chimney and windows**

The existing chimney should be retained and shown on the elevations not only on the plan. The existing diamond patterned leadlight windows facing College Street should be retained in-situ and noted on the drawings. Details, demonstrating compliance with this condition are to be submitted to Council prior to the issue of the Construction Certificate.

Reason: To ensure, that the existing/original features of the heritage item are preserved.

19. **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.

20. **Engagement of Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with the Terrestrial Biodiversity Report (GIS Environmental 25 Feb 2021).

The Project Ecologist must have one of the following memberships / accreditation:

- o Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- o Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

21. **Construction and Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) shall be prepared by an RMS accredited person and submitted to and approved by the Principal Certifying Authority prior to the commencement of bulk / civil excavation works required.

The CTMP must address following as appropriate:

- o The proposed phases of construction works on the site, and the expected duration of each construction phase, including methods of excavation, vibration minimisation and protocols to be implemented to advise surrounding residents of high noise (such as impact excavation, rock drilling, concrete pumping and the like during site works).
- o The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken including dust suppression, site safety and noise minimization.
- o Make provision for all construction materials to be stored on site, at all times.
- o The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- o The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed as applicable.
- o The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- o Make provision for parking within driveway / garage slab / kerb side parking.

- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety traffic as appropriate.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation / prevent erosion / soil slumping, adjacent to adjoining properties and having regard to any Geotechnical Report recommendations provided with the development application. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties from machinery / work damage.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”. A copy of the site CTMP is to be submitted to Council prior to issue of the Construction Certificate for record keeping purposes to assist with any related enquiries for the site.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. Project Arborist

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

The Project Arborist is to supervise all demolition, excavation and construction works near all street trees fronting the site along College Street to be retained, identified in the Arboricultural Impact Statement as tree A, B, C and D, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

- i) section 9.4 - fencing works for trees C and D
- ii) section 9.4 - ground and trunk protection works for trees A and B
- iii) section 9.4 - crown lifting and crown reduction works to trees A and B

All tree protection measures specified must:

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

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

Note:

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

Reason: Street tree protection.

23. **Compliance with Ecologist's Recommendations – During Construction**

All biodiversity-related measures are to be implemented during construction in accordance with the Terrestrial Biodiversity Report.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

24. **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. Including but not limited to, subject to the direction of the Certifying Authority:

No.30 Reddall Street, Manly
No.5 College Street, Manly

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain

access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

25. 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.

Any 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: Street tree protection.

26. Tree and Vegetation Protection

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

- i) all trees and vegetation located on adjoining properties,
- ii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

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

The Certifying Authority must ensure that:

d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

27. **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.

28. **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.

29. **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.

30. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide at kerb and 5 m wide at boundary 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.

31. **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**

32. **Landscape Completion**

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

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

Reason: Environmental amenity.

33. **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.

34. **Compliance with Ecologist's Recommendations – Post Construction**

All biodiversity-related measures are to be implemented at the appropriate stage of development in accordance with the Terrestrial Biodiversity Report.

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

35. **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.

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

The Applicant is evidence of the completion of geotechnical recommendations within Geotechnical Report (Condition 1) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

37. **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.

38. **House / Building Number**

House/building number is to be affixed to the building letterbox / fence 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

39. **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.

40. **Control of Domestic Dogs/Cats**

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife in accordance.

41. **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.

42. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.





ITEM 3.6 **DA2020/0563 - 16 & 18 RALSTON AVENUE, BELROSE -
DEMOLITION WORKS AND CONSTRUCTION OF A SENIORS
HOUSING DEVELOPMENT**

REPORTING MANAGER Rebecca Englund
TRIM FILE REF 2021/852495
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

- A. THAT Council as the consent authority **refuses** Development Consent to DA2020/0563 for Demolition works and construction of a Seniors Housing Development on land at Lot 10 DP 565686, 18 Ralston Avenue, Belrose & Lot 11 DP 565686, 16 Ralston Avenue, Belrose, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0563
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 10 DP 565686, 18 Ralston Avenue BELROSE NSW 2085 Lot 11 DP 565686, 16 Ralston Avenue BELROSE NSW 2085
Proposed Development:	Demolition works and construction of a Seniors Housing Development
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under SEPP (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Lindsay Bruce Grose Mary Grose
Applicant:	MHN Design Union Pty Ltd
Application Lodged:	01/06/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	05/06/2020 to 19/06/2020
Advertised:	05/06/2020
Submissions Received:	7
Clause 4.6 Variation:	4.3 Height of buildings: 2%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 5,202,052.00

Executive Summary

The proposal is for a seniors housing development, including 16 apartments and basement parking.

The application has not satisfied Council's Engineers in relation to flooding and stormwater. As such, the application is recommended for refusal based on these issues.

The application also includes minor non-compliances with the maximum ceiling height limit under SEPP (Housing for Seniors and People with a Disability), and the Warringah LEP. The plans have not identified these non-compliances and no clause 4.6 statement has been provided. Therefore, despite the minor nature of the proposed height breaches, refusal must be recommended on this basis. Further, the application is also inconsistent with the solar access requirements of the SEPP for minimum solar access to the proposed apartments.

The assessment of the application has otherwise found that the overall design of the proposal is generally acceptable in relation to the context of the site and surrounds, and relevant planning controls.

Submissions were received from neighbours to the rear and to the east, and the issues raised in these submissions are addressed within the report.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks development consent for:

- Demolition of all existing structures on site;
- Construction of a 2-storey seniors housing development comprised of:
- 16 dwellings comprising 2 x 1 - bedroom, 11 x 2 - bedroom and 3 x 3 - bedroom dwellings;
- 21 off-street car parking spaces (amended to 20);
- 12 bicycle spaces; and
- Removal of some existing vegetation.

The proposal includes the consolidation of the 2 lots comprising the site into a single lot and the consequent extinguishment of the redundant rights of carriageway.

The development is to be subdivided under the Strata Schemes (Freehold Development) Act 1973 upon its completion as "complying development" under Clause 6.1 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Two new pram ramps complying with AS1428.1-2009 and Council's specifications are proposed to be constructed in front of the development in Ralston Avenue in accordance with the access report accompanying the application to allow residents to cross the road to access the footpath on the opposite side and the bus stops in Pringle Avenue and the Belrose shopping centre.

During the assessment process, the plans were amended in various ways primarily to achieve flood and stormwater requirements (as detailed on the plans clouded red). The amendments did not increase the environmental impacts of the proposal, and as such, re-notification of the proposal was not necessary, in accordance with Council's 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 Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 5.21 Flood planning

Warringah Development Control Plan - C4 Stormwater

Warringah Development Control Plan - E11 Flood Prone Land

SITE DESCRIPTION

Property Description:	Lot 10 DP 565686 , 18 Ralston Avenue BELROSE NSW 2085 Lot 11 DP 565686 , 16 Ralston Avenue BELROSE NSW 2085
Detailed Site Description:	The site comprises the land known as 16-18 Ralston Avenue, Belrose, and is situated on the northern side of Ralston Avenue, between Neridah Avenue and Cotentin Road. The land is legally described as Lots 10 and 11, DP 565686. The site is battle axe shaped and has: • a frontage of 11.01m to Ralston Avenue; • a minimum width of some 28.6m and an average depth of some 100m in the area upon which residential development is to occur; and • an area of 3,339.4m². The land contains: • a 2-storey dwelling house on 16 Ralston Avenue; and • a part 1 / part 2-storey dwelling house, carport, double garage and in-ground swimming pool on 18 Ralston Avenue. The land experiences a fall of some 7.2m from its northern rear boundary to its Ralston Avenue frontage. This represents a grade of 1 in 17, or 5.9%.

There is vegetation across the site, with larger trees being concentrated towards the rear of the site.

The land is subject to:

- a reciprocal right of carriageway arrangement over the access corridors to 16 and 18 Ralston Avenue;
- a right of carriageway 4.5m and variable width over 16 Ralston Avenue in favour of 18 Ralston Avenue; and
- an easement to drain water 3m wide adjacent to the south-eastern corner of 16 Ralston Avenue and the access corridors to 16 and 18 Ralston Avenue.

The rights of carriageway would become redundant upon approval of this application and are to be extinguished. The easement to drain water, which accommodates 2 x 900mm pipes, is to be retained.

There are concrete footpaths along the northern side of Ralston Avenue and the majority of its southern side connecting Forest Way and Pringle Avenue.

There are bus stops on both sides of Ralston Avenue (within 300m to the west), Pringle Avenue (within 200m to the south-west) and Forest Way (within 250m to the east) accommodating Forest Coach Lines Routes 271, 274, 282 and 283. These bus routes link Terry Hills to the Sydney CBD and Chatswood Shopping Centre and also provide access to these and other areas. The Belrose neighbourhood shopping centre is located some 200m to the west of the site fronting Ralston and Pringle Avenues.

The land immediately to the east of the site comprises the properties known as 8-12 Ralston Avenue. These properties contain:

- 2-storey dwelling houses on 8 and 10 Ralston Avenue; and
- a single storey dwelling house on 12 Ralston Avenue.

The properties at 10 and 12 Ralston Avenue are battle-axe lots and their access corridors adjoin their common boundary with 16-18 Ralston Avenue and separate the houses on them from 16-18 Ralston Avenue.

The land immediately to the south of the site comprises the property known as 14 Ralston Avenue. This property contains a part 2 / part 3-storey dwelling house.

The land further to the south, on the opposite side of Ralston Avenue, comprises the properties known as 15 Ralston Avenue and 5 Lyndale Place. These properties contain 2-

storey contemporary dwelling houses. Lyndale Place is a private road and part of a contemporary multi dwelling housing complex.

The land immediately to the west of the site comprises the properties known as 20 and 22 Ralston Avenue. These properties are battle-axe lots and contain:

- a single storey dwelling house on 20 Ralston Avenue; and
- a part 1 / part 2-storey dwelling house on 22 Ralston Avenue.

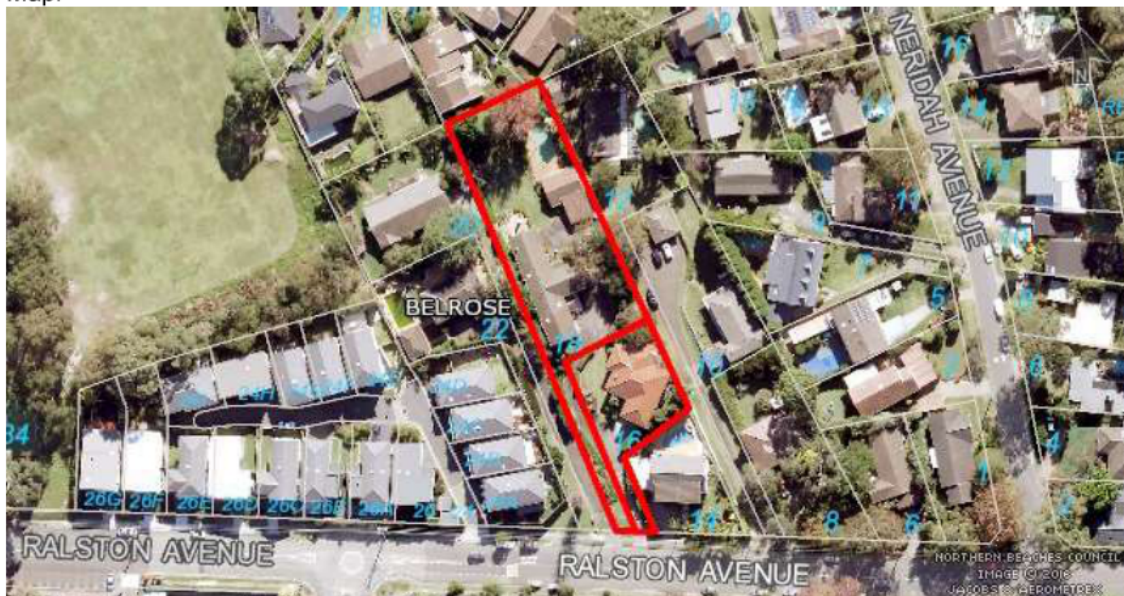
The access corridor to 20 Ralston Avenue, which adjoins the common boundary with 16-18 Ralston Avenue, separates the house on 22 Ralston Avenue and development further to the west from 16-18 Ralston Avenue.

24-26 Ralston Avenue contains a contemporary 2-storey community-titled multi dwelling housing complex known as Sugarloaf comprising 17 dwelling constructed in accordance with Development Consent No. DA2004/1404, issued on 30 August 2005.

The land immediately to the north of the site comprises the properties known as 5 and 7 Curragundi Avenue. These properties contain:

- a single storey dwelling house on 5 Curragundi Avenue; and
- a 2-storey dwelling house on 7 Curragundi Avenue.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site, given all existing site structures are proposed for demolition. The land has been used for residential purposes for an extended period of time.

A prelodgement meeting (PLM2019/0036) was held on 14/03/2019. The notes include the following advice:

"The proposal is not acceptable and requires redesign prior to submission, In particular, you are strongly encouraged to limit the footprint of the development to be generally consistent with the numeric requirements of the SEPP. Furthermore, the development is to designed so as to present a two storey residential development when viewed from the street."

The development as now presented in the current development application has been significantly redesigned compared to the prelodgement plans. Consistency with the relevant planning matters is discussed in the relevant sections of this report.

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. At the time of lodgement, Draft State Environmental Planning Policy (Housing) 2021 was on exhibition for comment. The policy was gazetted on 26 November 2021. Schedule 7 of the policy makes saving provisions for any development application made, but not yet determined, on or before the commencement date. Notwithstanding, the provisions of new policy have been considered in this report.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000	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.

Section 4.15 Matters for Consideration	Comments
(EP&A Regulation 2000)	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 flooding and stormwater issues. This information was provided, but did not satisfy the relevant requirements (see discussions by Development and Flood Engineers under Referrals section of this report). Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent if the application is approved. 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 may be addressed via a condition of consent if the application is approved. 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. The application has not demonstrated that it can adequately mitigate flooding and stormwater issues. Further, the application has not demonstrated that the proposed breaches to the height limit result in no unreasonable environmental impacts. (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

Section 4.15 Matters for Consideration	Comments
	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 unsuitable for the proposed development. The application has not demonstrated that it can achieve the relevant requirements in relation to flooding on site.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Warringah LEP and DCP in relation to flooding and stormwater, and if approved will result in a development which will create an undesirable precedent such that it would undermine the existing controls in relation to flooding, stormwater, height and solar access, and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 05/06/2020 to 19/06/2020 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 7 submission/s from:

Name:	Address:
Mrs Julie Moran	5 Curragundi Avenue BELROSE NSW 2085
Elizabeth Jane Childs	40 Kirkstone Road WHEELER HEIGHTS NSW 2097
Michael Childs	12 Ralston Avenue BELROSE NSW 2085
Mrs Olive May Kershaw	10 Ralston Avenue BELROSE NSW 2085
Mrs Marea Rae Riggall	12 Ralston Avenue BELROSE NSW 2085
Eleven Legal Pty Ltd	PO Box 265 BELROSE NSW 2085
Mr Bruce Lachlan Hardy Patricia Zoe Hardy	7 Curragundi Avenue BELROSE NSW 2085

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

- Privacy
- Location of Sydney Red Gum
- Location of path
- Retention of fence
- Flooding
- Noise
- Solar Access
- Visual Impact
- Geotechnical/Excavation
- Waste Management
- Traffic Management
- Market Value
- Incorrect identification of neighbouring property on plans
- Height

The matters raised within the submissions are addressed as follows:

- **Privacy**
Concerns were raised by the owners of numbers 10 and 12 Ralston Avenue to the east, and 5 and 7 Curragundi Avenue to the rear in relation to privacy impacts. The owners of number 7 Curragundi Avenue also raised concerns more specifically in relation to the height at the rear, which are addressed separately below.

Comment:

The proposal generally provides for a reasonable level of privacy to be maintained to surrounding neighbours, and provides for side and rear setbacks in excess of the minimum requirements. The ground level of the development is setback a minimum of 17.5m to the rear boundary, and the first floor balconies a minimum of 21.8m to the rear boundary. Most of the existing established tall trees in the rear setback are to be retained, and a further Angophora tree has been proposed for the north eastern corner (though this is also objected to by neighbours, see below). Due to the distance and existing and proposed landscaping, the proposal is not considered to result in any unreasonable privacy impacts to the rear neighbours.

The east facing first floor balconies are setback 5m from the side boundary, and it is a further 5m across the access handle of number 12 Ralston Avenue to the western side boundary of number 10 Ralston Avenue. Additionally, the western portion of 10 Ralston Avenue is occupied by driveway, further extending the distance to private open space at number 10. The proposed landscape plan provides for various trees and shrubs for screening along the eastern side boundary, to heights of up to 10m and various heights lower than that to provide a good visual barrier.

The owner of number 12 made a specific request for a privacy screen on the eastern side of the rear first floor deck (Unit 12), and this is considered a reasonable request given this deck is in reasonable close proximity to the dwelling at number 12 (a minimum of 6.1m to the south western corner of the dwelling at number 12). It is noted however that number 12 has its swimming pool located to the west of its dwelling on site. As such, if the application is approved, a condition would be recommended requiring a privacy screen on the eastern edge of the unit 12 balcony.

Subject to implementation of the landscape plan and the condition discussed above, the proposal is considered to maintain a reasonable level of privacy.

- **Location of Sydney Red Gum (Angophora)**

Concerns were raised regarding the proposed location of a Sydney Redgum near the rear of the property, and potential to overhang numbers 5 and 7 Curragundi Avenue and drop branches. Concern was also raised regarding this tree by the owners of numbers 10 and 12 Ralston Avenue adjacent to the east.

Comment:

The Angophora tree is proposed on the landscape plan in the north eastern corner of the site. Council's Landscape Officer has assessed the proposal, and is generally satisfied with the landscape plan. The proposed Angophora tree is a common tree on the northern beaches, and the inclusion of it on the landscape plan provides good amenity in the area. However, given the objections and likelihood that the tree will significantly overhang the boundaries when mature, a condition would be recommended to choose a different species of tree with less height and spread if the application is approved.

- **Location of path**

Concerns were raised with the location of the access path on the eastern side of the proposal, and a request was made to have access from the western side.

Comment:

The path referred to in the submission is the ground level path that provides access to the rear of the property for residents and extends around the eastern side of unit 3 at the rear. The path is a maximum of 1m above the existing ground level at the boundary (at the southern end), decreasing to approximately 300mm above ground level at the northern end. It is setback 2.4m from the side boundary. The main access paths to access all proposed units are located on the western side of the development. The part of path referred to in the submission only provides access to the rear common landscaped area. It is considered that this path will not be a highly used thoroughfare. All units are provided with their own private open spaces, and common areas in multi dwelling developments generally do not receive a high level of use. Additionally, a 1.8m high lapped and capped timber fence is proposed, and screen planting to a height of 2.5m - 3m for the entire length of the side setback adjacent to the path. Given these factors, the proposed path in this location is considered acceptable, and will not result in unreasonable privacy impacts.

- **Retention of fence**

A request was made by the owners of 10 and 12 Ralston Avenue to the west to retain the existing brick fence on the side boundary, to mitigate noise and visual privacy impacts, ongoing fence maintenance and flood impacts.

Comment:

The survey submitted with the plans indicates that the existing brick wall fence is wholly within the subject site. The statement of effects states that the side and rear boundaries will be fenced by 1.8m high lapped and capped timber fencing. The proposal is for residential development, and is not expected to cause any particular noise impacts beyond what would normally be created by residents living. Lapped and capped timber fencing is considered a standard, attractive type of fence, that will also provide noise and visual privacy mitigation. Flooding impacts are addressed elsewhere in this report (and are the reason for the recommended refusal). If the application is approved, a condition would be recommended requiring the new fencing to be located wholly within the boundaries of the subject site (i.e. not on the boundary) given that the neighbours are in disagreement with the proposed new fencing.

- **Flooding**

Concerns were raised that the development would result in greater flooding of neighbouring properties.

Comment:

Flooding has been discussed by Council's Flood Engineer in the Referrals section of this report. In summary, the proposal has not demonstrated that it can achieve the necessary requirements of the relevant flood controls. As such, the proposal is recommended for refusal based on this issue.

- **Noise**

Concerns were raised with noise impacts, and requests were made for noise limit controls and noise monitoring requirements, as well as standard construction hours.

Comment:

The proposal is for a residential use in a residential area, and would not be expected to cause any unreasonable noise impacts through normal living circumstances in this regard. Standard conditions of consent would be recommended if the application was approved to ensure any mechanical plant did not operate above 5 decibels measured at the boundaries. During construction, standard conditions would also be recommended with regard to construction hours. The submission is considered to be relatively satisfied by these conditions.

- **Solar Access**

Requests were made for solar access diagrams showing the impacts of the development in summer months on 12 Ralston Avenue.

Comment:

The solar diagrams provided demonstrate adequate solar access will be maintained, in accordance with the relevant requirements. Further summer month diagrams have not been requested as they are not considered necessary to demonstrate compliant solar access levels are achieved.

- **Visual Impact**

Concerns were raised regarding the visual impacts of the development on 10 and 12 Ralston Avenue, and it was suggested the first floor be tiered back.

Comment:

The proposal is not 'tiered back' as requested. However, it is provided with a high level of articulation, and to the eastern side in particular where the objections arise from. The development is also generally broken into 3 or 4 separate elements (connected by roofs, paths and garden areas). A significant amount of screen planting is proposed along the side boundaries, and further planter boxes are proposed at first floor level to further break up the built form. Overall, the built form of the proposal is significantly broken up and screened by landscaping, and is generally provided with side setbacks well in excess of the minimum requirements. The visual impacts of the development have been mitigated to a reasonable degree, and the submissions are not supported in this regard.

- **Geotechnical/Excavation**

Concerns were raised regarding damage to neighbouring properties, and requests were made

for conditions relating to pre and post construction dilapidation reports of 10 and 12 Ralston Avenue, vibration monitoring, restrictions on machinery size, subsidence and excavation methods.

Comment:

A geotechnical report (Michael Adler and Associates, 12/9/2019) was provided with the application, and provides recommendations for excavation and safe retention methods, though the recommendations do not include vibration monitoring. Conditions of consent would be recommended in the event of approval to ensure the recommendations of the report are followed. Pre and post construction dilapidation reporting of surrounding properties would also be recommended.

- **Waste Management**

Concerns were raised regarding possible noise and dust impacts from crushing of site processed materials.

Comment:

Standard conditions of consent for construction would be recommended in the event of approval, to ensure no unreasonable impacts occur during development. The development is not particularly unusual, nor are there unusual site conditions that would require further conditions.

- **Traffic Management**

Concerns were raised that suitable garbage collection methodology be developed for the site consistent with Council procedures and minimising disruption to Ralston Avenue.

Comment:

The application was referred to Council's Waste Officer, who was satisfied with the proposal subject to conditions of consent. The conditions recommended include requirements to manage waste in accordance with standard requirements, and for the owner's corporation to be responsible for prompt delivery and collection of bins from the front of the property on collection days.

- **Market Value**

Concerns were raised that the development would affect the market value of 10 and 12 Ralston Avenue due to privacy, visual bulk and building density impacts.

Comment:

Assessment of market value is not a matter for consideration under the Environmental Planning and Assessment Act 1979. Each of the concerns raised in relation to perceived market value impacts are addressed elsewhere in this report.

- **Incorrect identification of neighbouring property on plans**

Concerns were raised that the plans incorrectly identify the direct rear neighbour as 4 Curragundi Avenue, when it is in fact 7 Curragundi Avenue, and that this led to the owners of number 7 Curragundi Avenue not being notified of the proposal.

Comment:

It is true that the plans incorrectly label the neighbour to the rear as number 4 Curragundi when it should be identified as number 7. However, this oversight had no impacts on Council's

notification process, and the notification letters on file include one addressed to the owners of number 7 Curragundi Avenue. Correct notification was carried out. The incorrect labelling of the rear neighbour does not impact on the assessment of the application in any significant way, nor on the assessment of environmental impacts to that neighbour.

- **Height**

Concerns were raised regarding the height of the proposal, and potential for overlooking of 7 Curragundi Avenue to the rear as a result.

Comment:

The proposal is compliant with the relevant height restrictions, including that there be no two storey elements within the rear 25% of the property. As such, the proposed upper level units at the rear are setback a minimum of 24.95m from the rear boundary. The large setback, combined with retention of existing trees in the rear setback area, and planting of new trees, will ensure there are no unreasonable privacy impacts.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objection subject to conditions 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.
Landscape Officer	No objection subject to conditions The Landscape Plans and Arborist's Report submitted with the application are noted. The Arborist's Report indicates that of the twenty seven trees assessed, three non-exempt tree species are to be removed and two exempt tree species are to be removed. The Report includes an Arboricultural Method Statement addressing tree protection during works, which can be included in tree protection conditions. The Landscape Plans indicate replanting of 16 tall/medium sized trees and 36 small tree and tree ferns across the site, in addition to other shrubs and groundcovers. No objections are raised to the proposed tree removals. The landscape plans are considered to address the relevant planning controls for this development.

Internal Referral Body	Comments
	No objections are raised to approval subject to conditions as recommended.
NECC (Development Engineering)	Proposal unacceptable The subject site is burdened by a Council drainage easement and stormwater infrastructure. In accordance with the advice provided in the pre-lodgement meeting, the applicant was required to accurately locate, confirm dimensions including depth and plot to scale Council's stormwater pipelines and associated infrastructure on the DA site plans that outline the proposal. This was to be carried out by a service locating contractor and registered surveyor. (Evidence of methodology used for locating stormwater system was to be provided). The other issue related to this point is that in accordance with Council's policy, all structures are to be located clear of any pipeline, pit or easement. In this regard, there are a number of proposed structures including the mailboxes, fences and or walls that are shown on the architectural plans which are contrary to this requirement. Also there are to be no trees planted over the easement only ground covers. Details demonstrating compliance has not been provided with the application. As the subject site is flood affected OSD is not required. The submitted drainage plan provides a connection to Council's pipeline traversing the site. The connection is not acceptable and it is considered that the connection is to be into the existing junction pit within the property where it is determined that this pit is connected to Council's pipeline. Where this is not the case, a new junction pit with a sealed lid is to be provided with details included on the design plans. Also it appears that the non-return valve provided to ensure flood water does not enter the basement may be located on downstream side of the pit instead of the upstream side. A detail of the flap valve must be provided for clarity. It is considered that the swale drains detailed in the flood report must be included on the stormwater design plans for consistency. The proposal requires access in accordance with the SEPP clause 26 to the nearest bus stops. It is noted that Council's Traffic Engineer has included a condition to provide a 1.5 metre wide footpath the the two bus stops to the west of the site in Ralston Ave to comply with this requirement. As such the two pram ramps indicated on the plans, one either side of Ralston Ave, must be deleted from the plans. It is noted from the Geotechnical report that the site may be affected by groundwater. A condition to ensure the basement is tanked will be provided to address this issue. The proposed driveway crossing is satisfactory using Council's normal profile. The internal grades are to comply with AS/NZS 2890.1:2004. Development Engineers cannot support the application due to insufficient information to address clauses C4 and C6 of Warringah

Internal Referral Body	Comments
	DCP 2011. Amended Plans received 12/07/2021 The location of the stormwater pipe has been shown on the stormwater plans only and not the architectural plans. The proposed walls shown for the bin enclosure and mailboxes will conflict with the pipeline which is not acceptable. All structures are to be relocated from over the pipeline in accordance with Council's Water Management for Development Policy. The issues raised with respect to the stormwater design have not been addressed in the revised plans. The access report relies upon the provision of two pram ramps in the front of the site to cross Ralston Ave. It is considered that this issue must be assessed by Council's Traffic Engineers as this crossing point may require a refuge island to permit the safe crossing of the road at this point. Where this is not permitted, the distance to the bus stops via a safe path using the existing crossing point in Ralston Ave will exceed the requirements of clause 26 of the SEPP. This issue must be assessed by Council's Traffic Engineers. Development Engineers cannot support the application due to insufficient information to address clauses C4 and C6 of Warringah DCP 2011. Planner Comment Although the access report provided with the application identifies bus stops on Pringle Avenue as being within 400m, and therefore requires the pram ramps mentioned above, there are other bus stops on Ralston Avenue to the west of the site, that are accessible via footpath and pedestrian crossing, and within 400m walking distance on both sides of the road as required by SEPP HSPD. These bus stop service the same bus routes as the Pringle Avenue stops, and also provide access to Forest Way Shopping Centre, Chatswood, and Manly. As such, the Traffic Engineer comments provided do not need to be updated, noting that conditions are recommended to upgrade the footpaths along Ralston Avenue to provide necessary widths. The proposed pram ramps may be deleted by condition of consent if the application is approved.
NECC (Stormwater and Floodplain Engineering – Flood risk)	Proposal unacceptable The proposed seniors living development is classified as a vulnerable use, as a result such developments within flood prone areas must adhere to stricter requirements to ensure the safety of the occupants and the structure. The application is accompanied by a Flood Management Report prepared by SGC Consulting Engineers dated 22 April 2020 then revised to respond to Council Flood referral comments and dated 22 June 2021. Council commissioned Cardno to review SGC's modelling methodology and results and prepared a

Internal Referral Body	Comments
	report dated 19 October 2021. Council has reviewed the "Response to Council Comments" Letter dated 11 November 2021. Issues with the proposed development include: • The development must have no adverse flooding impacts on neighbouring properties as defined in the DCP. The adverse impacts on flooding occur to the south and east of the site have not been adequately addressed. ○ Modelling done by SGC shows there is localised offsite increases of greater than 0.05m increase in the PMF level as a result of the development. Review of the model by Cardno (on behalf of Council), confirmed the results showed localised offsite increases of greater than the allowable 0.05m increase in the PMF level. SGC's modelling shows these impacts to be greater than 0.2m increase. ○ SGC modelling results also show localised areas of greater than a 10% increase in PMF peak velocity. Velocity difference mapping was not undertaken by Cardno. The applicant must provide velocity mapping or spot heights at the exceedence locations in m/s units to show that the velocity changes are insignificant. • Basement car park crest must be at or above the PMF level (or FPL, whatever is higher). Table 1.1 indicates that location K at the basement carpark is not affected by the 1% AEP flood, where as Figure A1.7 shows 1% AEP flooding at the location of the carpark entry. Even if 1% AEP floodwaters are below the suspended driveway, a 0.5m freeboard must be added for the driveway crest so it is higher than both the FPL and PMF. It is unclear if the driveway crest is above the FPL and PMF. The locations of Points A-K are not shown on any Figure in the Report. Further to this, Chapter 8.3.1 states that a "1.3m high flood walls around the basement driveway entry ramp" is proposed. Based on Figure A1.10, it is not clear where the 1m and 1.3m high flood walls start and end around the development. This must be clearly shown on a site plan. • More information must be provided in the form of detailed cross sections and long sections of the lot and overland flow swales, showing the post development 1% AEP flood levels, Flood Planning Levels (including a 0.5m freeboard) and PMF flood levels relative to the building floor levels and relative the height of the flood barrier/wall. Plan sections may also be required if it is unclear if all if parts of the wall have the required freeboard.
Strategic and Place Planning (Urban Design)	No objection subject to conditions The proposal has addressed the Pre-lodgement meeting Urban

Internal Referral Body	Comments
	Design comments (provided below) in a satisfactory manner. Pre-Lodgement Meeting Comments: 1. "To achieve consistency in fitting with the surrounding context, adequate articulation and greater 'gaps' should be imposed within parts of the building to improve built form of being " detached style housing'. The proposed built forms should read as three pavilions separated by 4m wide landscaping 'gaps'. The front facade should read as a two-storey building. Response: The proposal have distinct breaks in the built form making them less bulky and contextually fitting to the surrounding houses. These gaps are further enhanced with the proposed landscape design. 2. Proposal to comply with the 8m (2 storey and roof form) building height requirement and SEPP requirement of buildings located in the rear 25% area of the site to be one storey in height. Response: The proposal has provided a landscaped buffer in the rear 25% of the site and have only minor breaches of the 8m building height requirement. 3. Proposal to provide minimum landscape requirement. Response: The proposal has provided landscape of 46% of site area (30% required). 4. Building facade to be well articulated in order to break down the bulk and scale. Basement car park structure should not protrude above existing ground line by more than 1 metre in height. Response: The proposed building facades are well articulated and the basement protrusions above natural ground are well set-backed (2.6 to 6.1m) from the side boundaries. 5. Shadow diagrams to be submitted for shadow impact to surrounding residential area. Response: The shadow diagrams indicate adequate sunlight will be provided to the neighbouring properties. 6. More details to be provided for full compliance of the SEPP." Response: The proposal has considered the built form requirements of the SEPP.
Traffic Engineer	No objection subject to conditions Proposal: The proposal is for demolition of the existing structures and construction of a 2-storey seniors housing complex containing: - 16 dwellings comprising 2 x 1-bedroom, 11 x 2-bedroom and 3 x 3-bedroom dwellings; - provision of 21 off-street car parking spaces and 12 bicycle spaces. Traffic generation: The expected traffic generation associated with the proposed development is estimated to be the total of 9 vehicle trips during peak hour periods noting that morning site peak hour does not generally coincide with the network peak hour. The projected traffic generation is considered to have minimal impact on the surrounding road network and is acceptable.

Internal Referral Body	Comments
	Parking: Application of the SEPP 2004 requires a total 18 car parking spaces. The proposed comprises a total of 21 car parking spaces, which satisfies the parking requirement. The proposal also includes the provision of 12 bicycle parking spaces, with 4 being publicly accessible on the ground level. An adequate bicycle supply is provided onsite, satisfying Council's parking requirements. Access: The proposal is considered acceptable in regards to its location within less than 400m from public transport facilities and the existence of footpath connection to the bus stops. The footpaths will require upgrading to provide 1.5m clear widths along the full length leading to the eastbound and westbound bus stops along Ralston Avenue. The bus stops will need to be upgraded to be DDA compliant. Car parking design: The proposal comprises a 5.6m width two-way driveway facilitating access to Ralston Street and two-way passing at the property boundary, which is satisfactory. The proposed car park design is acceptable subject to the compliance with AS2890. Given the above, the proposal is supported on traffic grounds subject to conditions:
Waste Officer	No objection subject to conditions Waste Management Assessment Recommendation - Approval subject to conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	No objection subject to 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.

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. 1091830M).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	45

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

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for in-fill self-care housing.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) make efficient use of existing infrastructure and services, and*
- (c) be of good design.*

Comment: The proposed development is considered to be consistent with the aims of the Policy as set out above for the following reasons:

- (a) The development will increase the supply and diversity of residences that meet the needs of seniors or people with a disability.
- (b) The proposed development also makes efficient use of existing infrastructure and services, in that the site is well serviced by existing public transport and is located within 400m of the nearest bus stop,

providing access to the Forest Way shopping centre, Chatswood, and Manly. The site is located approximately 200m - 300m from a local retail centre which provides a mix of essential retail and commercial services.

c) When considering the development against the aim of achieving good design, the development must be considered in context with other provisions of the SEPP. In particular, that development pursuant to this SEPP is to be of scale and so that is able to fit reasonably within its local context.

In this regard, this assessment has found that the built form of the development maintains a reasonable level of amenity and is compatible with the area in which it will sit. The development does not give rise to any unreasonable adverse amenity impacts in terms of privacy, view loss or overshadowing and will fit reasonably within its local context.

Chapter 2 – Key Concepts

Comment: The development comprises a group of self-contained dwellings, which are to be occupied by seniors or people with a disability. On this basis, it is considered that the proposed development is consistent with Chapter 2 of the SEPP.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	Belrose shops are located approximately 200m (or 300m walking distance via the pedestrian crossing on Ralston Avenue) to the west, and there are bus stops within 400m of the site providing access to the Forest Way Shopping Centre, Manly and Chatswood.	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service	Bus stops providing access to the Forest Way Shopping Centre, Manly and Chatswood are located on Ralston Avenue, within 400m walking distance. Council's Traffic Engineer has recommended conditions for upgrading of the footpaths to access the bus stops should the application be approved. It is noted that the access report provided with the application states that the residents will access the bus	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	available to the residents not more than 400metres away.	stops on Pringle Avenue, which are closer, but do not have an existing safe path of travel without pedestrian islands being provided. However, the stops on Ralston Avenue service the same bus routes, and are accessible via direct footpath on the northern side of Ralston Avenue, and via the pedestrian crossing on the southern side of Ralston Avenue. These stops are within 400m walking distance from the site.	
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	N/A	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	The existing residential buildings on the land are connected to the required water and sewerage infrastructure servicing this area. A section 73 certificate from Sydney Water will be required by condition of consent if the application is approved.	Yes
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure	The development is compatible with the surrounding natural environment and existing residential use of land within the vicinity of the proposed development. The site is served by existing infrastructure (electricity, water and sewerage) that is capable of meeting the demands that will arise from the development. For the reasons outlined within this report, the development is considered to be compatible with the bulk, scale, built form and character of the surrounding area.	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.		
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	A detailed site analysis in plan form and within the Statement of Environmental Effects has been provided which satisfactorily addresses the requirements of this control.	Yes

Clause 31 Design of in-fill self-care housing

Pursuant to Clause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.	Generally, the development follows the pattern of the existing residential neighbourhood in terms of its built form. The established built form in the neighbourhood is characterised by a mix of detached style dwelling houses, one to two storeys in height within landscaped settings, and other higher density housing for seniors. The design of the proposal breaks up the two storey elements to make the development more visually similar from a distance to two storey detached dwellings.
2. Site Planning and design	Objectives of this section are to:	The development will present as a building of part single and part two storey elements when viewed from

Section	Requirements	Comment
	-Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	surrounding properties, with the main two storey elements separated into three separate elements. The built form is generally consistent with the bulk and scale of surrounding buildings which are predominantly sited on battle axe allotments. The bulk and scale of the development has been effectively minimised by appropriate building setbacks, articulation and landscaping.
3. Impacts on streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	The proposal will not be highly visible from the street frontage by virtue of the battle axe lot configuration. The access handle contains areas of landscaping and hard surface driveway/pathway. The combination of landscape treatments in the access handle and the turn of the driveway will effectively minimise the dominance of the driveway and basement car park entry on the Ralston Avenue streetscape.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	The development has been assessed with regards to privacy, overshadowing, building bulk and view sharing. <u>Privacy</u> The development has been designed having regard to maintaining a reasonable level of acoustic and visual privacy between properties. Appropriate building setbacks and effective use of privacy treatments will maintain a reasonable level of privacy to adjoining properties. If the application is approved, conditions are recommended in relation to further privacy screening on the rear first floor decks, to minimise overlooking in the direction of 12 Ralston Avenue to the east. The east facing first floor balconies are setback just over 5m from the side boundary, and adjacent to a driveway to the east, meaning it is a minimum of 10m to the property boundary of number 10 Ralston

Section	Requirements	Comment
		Avenue, and further again to useable private open space, given the driveway of 10 Ralston Avenue occupies the western portion of that site. Combined with the screen planting proposed in the eastern side setback areas (including trees and shrubs of up to 10m height at maturity), privacy will be maintained to a reasonable level. The development satisfies the requirements and objectives of Clause D3 – 'Noise' and of Clause D8 – 'Privacy' under the WDCP 2011 under the WDCP 2011. <u>Overshadowing</u> The shadow diagrams provided by the applicant indicate that the development will not result in any unreasonable overshadowing of the neighbouring residential properties. The development satisfies the requirements and objectives of Clause D6 – 'Access to Sunlight' under the WDCP 2011. <u>Building bulk</u> As detailed throughout this report, the bulk of the building and its impacts on neighbouring properties have been effectively minimised by way of appropriate building setbacks, articulation and varied building height. The development satisfies the requirements and objectives of Clause 4.3 - Height of Buildings Development Standard under WLEP 2011 and Clause D9 - 'Building Bulk' under WDCP 2011. <u>View sharing</u> The development will not have any adverse impact on view sharing and satisfies the Planning Principle established in Tenacity Consulting v Warringah [2004] NSWLEC 140 and Clause D7 – 'Views' under the

Section	Requirements	Comment
		WLEP 2011. No unreasonable view loss was identified, and no submissions have been received in this regard.
5. Internal site amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	The development is served by pathway, lift and stairwell access/egress that provides safe and distinct pedestrian routes to all levels of the building, individual dwellings and to the communal facilities of the development.

Clause 32 Design of residential development In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	The subject site is located within the R2 Low Density Residential zone. Surrounding land is similarly zoned. The character of the immediate area can be described as predominantly battle axe allotments with a mix of single and two storey dwelling houses and detached garages. There are a number of dwellings located on small sites along Ralston Avenue to the west in a higher density style subdivision/development. The development recognises the desirable elements of the subject sites current character and adopts a design that is generally consistent in built form with that of detached style housing in the local area, by varying the height of the building, in particular including one and two storey elements, and by varied setbacks, generally greater than the minimum requirements under the Warringah DCP.	Yes

Control	Requirement	Proposed	Compliance
		The buildings have been well designed through appropriate building separation, setbacks and articulation which includes the two storey elements being separated by single storey elements through the building foot print. The development is well served by areas of landscaping which will enhance and soften the visual appearance of the development when viewed from surrounding properties.	
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that are identified in a local environmental plan.	The subject site is not located within close proximity to a heritage conservation area or any heritage items identified under WLEP 2011.	Yes
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact	The development maintains a reasonable level of neighbour amenity and appropriate residential character. The development has been designed having regard to maintaining a reasonable level of privacy to adjoining properties and for future dwelling occupants. Appropriate building separation, setbacks and articulation have been adopted in the design of the building to ensure the visual bulk and scale is appropriately minimised. The development allows for a reasonable level of solar access to be provided to adjoining properties and for future dwelling occupants in accordance with the	Yes

Control	Requirement	Proposed	Compliance
	of the boundary walls on neighbors.	requirements of the SEPP and Clause D6 - Access to Sunlight under WDCP 2011. The siting and design of the buildings appropriately relates to the sites land form and local topography. The development will not create unreasonable visual impacts on the surrounding area given its setback from the street, and fits comfortably within the building envelope and maximum height of buildings.	
	d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	The design of the development is sympathetic with the front boundary setback of development on other battle axe allotments in the surrounding area.	Yes
	e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	44% (1474.4sqm) of the total site area is deep soil landscaped area. Landscaped areas are provided around the perimeter of the site, including within the access handle to the site. The areas identified as soft landscaping provide a satisfactory level of landscaping through the provision of trees and shrubs which will assist in softening the appearance of the development when viewed from the street and neighbouring properties. Council's Landscape Officer has reviewed the landscape plans provided, and not raised any concerns. The landscape plans are recommended for approval as part of the set of approved plans, if the application is approved.	Yes
	f. retain , wherever	The proposal includes the	Yes

Control	Requirement	Proposed	Compliance
	reasonable, major existing trees, and	removal of a number of major trees which are located within the developable area of each subject site. However, Larger existing trees are retained where possible, particularly within the rear setback of the site, and replacement planting has been proposed for the trees that are to be removed.	
	g. be designed so that no building is constructed in a riparian zone.	The application has been reviewed by Council's Landscape Officer who raises no objections to the removal of trees, retention of trees and provision of landscaping proposed subject to conditions. The site is not located within a riparian zone.	N/A
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The development has been designed having regard to maintaining a reasonable level of acoustic and visual privacy between properties. Appropriate building setbacks and effective use of privacy treatments maintain a reasonable level of privacy to adjoining properties. The development satisfies the requirements and objectives of Clause D3 – 'Noise' and of Clause D8 – 'Privacy' under the WDCP 2011. The development satisfies this Principle.	Yes
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate	The individual clauses are addressed as follows: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of	Yes

Control	Requirement	Proposed	Compliance
	sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	private open space, <u>Comment</u> 15 of the 16 apartments will receive a minimum of two hours direct sunlight between 9am and 3pm in mid-winter. The shadow diagrams provided by the applicant indicate that the development will not result in any unreasonable overshadowing over the neighbouring residential properties. The development satisfies the requirements and objectives of Clause D6 – 'Access to Sunlight' under the WDCP 2011. (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction. <u>Comment:</u> The development is accompanied by NatHERS Certificates which indicates that the development will have a rating of 5.9 Stars under the Nationwide House Energy Rating Scheme which is considered satisfactory for the location of the site. The environmental performance of the development is also guided by the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The development is defined as BASIX Affected Development because it involves the erection	

Control	Requirement	Proposed	Compliance
		of a BASIX Affected Building. A BASIX certificate has been submitted with the application which demonstrates the development will achieve compliance with the minimum targets. Therefore, the development satisfies the requirements of the SEPP.	
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	The applicant has submitted amended stormwater plans which have been reviewed by Council's Development Engineer. As discussed in the Referrals section of this report, Council's Engineers are not currently satisfied with the design for stormwater. Further, the development is not satisfactory in relation to flooding. As such, this issue forms a recommended reason for refusal of the application.	No
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked,	The development accommodates 16 units and is therefore not subject to an assessment under the principles of Crime Prevention Through Environmental Design (CPTED). Notwithstanding the above, the proposed development has been designed to meet the requirements of CPTED.	Yes

Control	Requirement	Proposed	Compliance
	and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.		
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The development is capable of providing for obvious and safe pedestrian links to bus stops on Ralston Avenue through the provision of a public pathway located adjacent to the main pedestrian entrance to the site which will provide a continuous path to the surrounding local facilities and public transport. Council's Traffic Engineers have recommended a condition of consent is requiring the footpath to be upgraded to provide the necessary clearance widths along the Ralston Avenue. The development provides for a safe environment for pedestrians and motorists with convenient access and on-site parking for residents and visitors.	Yes
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	Waste facilities are provided at basement level at the front of the site in the form of a bin storage area within the basement car park. Council's Waste Officer has reviewed the plans and is satisfied with this arrangement. A Waste Management Plan has been provided with the application and has also been reviewed and accepted by Council's Waste Officer.	Yes

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	3339.4sqm	Yes
Site frontage	20 metres	31.6m	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	8.37m	No
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	2 Storeys	Yes
	A building located in the rear 25% of the site must not exceed 1 storey in height.	First floor is located outside of rear 25%.	Yes

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The application is supported by an Access Report (refer to Access Report prepared by Ergon Consulting dated 6 May 2020) that demonstrates the development is capable of achieving the requirements of Clause 41. In this regard, compliance with the recommendations and requirements contained within the Access Report would be included as a condition of consent within if the application was approved.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	8.37m	No - There is a minor non-compliance with the height limit caused by the raked ceiling above unit 13.
Density and scale	0.5:1	0.49:1	Yes
Landscaped area	30% of the site area is to be landscaped	44%	Yes
Deep soil zone	15% of the site area should be deep soil. Two thirds of the	38.2% (Approximately 1275sqm with minimum dimension of 3m) of the	Yes

Control	Required	Proposed	Compliance
	deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	landscaped area deep soil. Approximately 517sqm (40.5% of 1275sqm) of this area is located in the rear setback of the site. Given the length of the site and required setbacks, and that the proposal more than achieves the overall minimum requirements for landscaped area and deep soil area, this is considered acceptable.	
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	10 of the 16 dwellings (62.5%) receive the required amount of sunlight to their living rooms. Units 4 and 5 are indicated on the plans as being compliant. However, unit 4 is overshadowed by unit 3, and unit 5 only receives 3 hours from 8am, not 9am.	No
Private open space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and (ii) in the case of any other dwelling,	All apartments are provided with compliant areas of private open space.	Yes

Control	Required	Proposed	Compliance
	there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area		
Parking	(32 bedrooms proposed – 16 carparking spaces required)	17 spaces plus 3 visitor spaces provided.	Yes

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

State Environmental Planning Policy (Housing) 2021 was gazetted on 26 November 2021. Savings provisions apply for this application pursuant to Schedule 7 of the policy. Notwithstanding, the relevant controls of this policy shall be considered.

The relevant controls of the policy remain the same as those of SEPP (HSPD) with the exceptions of Clause 84(2)(c), Clause 86(1)(d) and Clause 90. An assessment of the application against these clauses is provided below:

Part 4 – Housing for seniors and people with a disability

Clause 84 - Development Standards (General)

This clause applies to development for the purposes of seniors housing involving the erection of a building.

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

c) For development on land in a residential zone where residential flat buildings are not permitted the development will not result in a building:

- i. with a height of more than 9.5m, or*
- ii. with more than 2 storeys if the building is adjacent to the boundary of the site area.*

Comment: The new SEPP allows a greater building height of up to 9.5m (8m permitted under SEPP HSPD). The proposal complies with this requirement. The proposal is no more than two storeys in height.

Clause 86 - Development Standards for Seniors Housing—Zones RE2, SP1, RU5 and R2

1) Development consent must not be granted for development for the purposes of seniors housing unless the consent authority is satisfied as follows:

d) R2 Low Density Residential

- i. the land is owned, or the development is carried out on the land, by the Land and Housing Corporation, or*
- ii. the development is carried out on Lots 28-31, DP255616, Janpieter Road, Box Hill, or*
- iii. the land is proposed to be used for seniors housing that will be provided by an operator.*

Comment: The application does not indicate that the seniors housing will be provided by an operator. Rather, strata subdivision is proposed, and it is assumed the proposed apartments would then be sold off individually. As a result, the application would not be permitted by this clause as currently proposed.

Clause 90 – Subdivision

1) Development consent may be granted for the subdivision of land on which development has been carried out under this Part.

2) Development consent must not be granted for the subdivision of a building resulting from development carried out under this Part on land in Zone R2 Low Density Residential or Zone B3 Commercial Core.

Comment: The proposal involves consolidation of the two existing lots known as 16 and 18 Ralston Avenue, and strata subdivision of the proposed development. The consolidation of the lots is permitted by this clause, but the strata subdivision of the site would not be permitted under this clause.

Schedule 7 Savings and transitional provisions

2 General savings provision

The former provisions of a repealed instrument continue to apply to the following—

- (a) a development application made, but not yet determined, on or before the commencement date,*
- (b) a concept development application made, but not yet determined, on or before the commencement date,*
- (c) a staged development application made subsequent to a concept development application approval granted on or before the commencement date,*
- (d) a development consent granted on or before the commencement date,*
- (e) an environmental impact statement prepared in compliance with an environmental assessment requirement that is—*
 - (i) issued by the Planning Secretary on or before the commencement date, and*
 - (ii) in force when the statement is prepared.*

Comment: This clause allows for the application to be approved despite the non-compliances with clauses 86 and 90 identified above, as the development application was made prior to gazettal of the SEPP on 26 November 2021.

SEPP (Infrastructure) 2007

Ausgrid

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

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

power line.

Comment:

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

Warringah Local Environmental Plan 2011

Is the development permissible?	No
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	8.67m	2%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 of the WLEP requires a maximum height limit of 8.5m. SEPP (HSPD) requires a maximum ceiling height of 8.0m.

The application proposes a minor non-compliance with the height limit caused by the pop up roof over unit 13, where it will be up to 8.67m high overall (2% non-compliance with the 8.5m height WLEP height limit), and have a ceiling height of up to 8.37m (4.6% non-compliance with 8.0m limit) due to the raked ceiling above the kitchen/dining area.

No clause 4.6 statement has been provided, and as such Council cannot consider approving the variation to the development standards. It is noted that a variation to the LEP height control cannot be granted on the basis of compliance with the SEPP, as the development is also inconsistent with the

height limit under the SEPP. The application must be refused on this basis.

5.21 Flood planning

Council's Flood Engineer has assessed the proposal (see Referrals section of this report), including further information provided by the applicants during the assessment process, and is not satisfied that the proposal can achieve the relevant requirements in relation to flood risk. As such, the proposal is inconsistent with the objectives and requirements of clause 5.21, and is recommended for refusal on this basis.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.2m	N/A	Yes
B3 Side Boundary Envelope	4m	Complies both sides	N/A	Yes
B5 Side Boundary Setbacks	0.9m	North minimum 2.3m	N/A	Yes
	0.9m	South minimum 2.645m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Minimum 11.9m to rear boundary of 14 Ralston Avenue, and 35m to road frontage.	N/A	Yes
B9 Rear Boundary Setbacks	6m	17.5m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	41.5% measured in accordance with clause D1 of the DCP. However, this requirement is superseded by the landscaping requirements in SEPP HSPD.	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
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	No	No
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
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
E11 Flood Prone Land	No	No

Detailed Assessment

C4 Stormwater

Council's Development Engineer has assessed the proposal, and is not satisfied that the proposal achieves the requirements of clause C4 (see Referrals section of this report). As such, the application is recommended for refusal on this basis.

E11 Flood Prone Land

Council's Flood Engineer has assessed the proposal, and is not satisfied that the proposal achieves the requirements of clause E11 (see Referrals section of this report). As such, the application is recommended for refusal on this basis.

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 \$52,021 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,202,052.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/0563 for the Demolition works and construction of a Seniors Housing Development on land at Lot 10 DP 565686, 18 Ralston Avenue, BELROSE, Lot 11 DP 565686, 16 Ralston Avenue, BELROSE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Housing for Seniors or people with a Disability) 2004 in relation to stormwater, height and solar access.

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 Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.
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 5.21 Flood planning of the Warringah Local Environmental Plan 2011.
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 C4 Stormwater of the Warringah 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 E11 Flood Prone Land of the Warringah Development Control Plan.
6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.





